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PENAL CODE

AN ACT

To Establish a Penal Code.

Be it enacted by the Legislative Assembly of the State of Montana, as follows:

TITLE OF THE ACT.

SECTION 1. This Act shall be known as the Penal Code of Montana, and is divided into three parts, as follows:

1. Crimes and punishments.
2. Criminal procedure.
3. State prison and county jails.

PRELIMINARY PROVISIONS.

Section 2. When this act takes effect.
" *3. Not retroactive.*
" *4. Construction of the Penal Code.*
" *5. Provisions similar to existing laws, how construed.*
" *6. Effect of Code upon past offenses.*
" *7. Certain terms defined in the senses in which they are used in this Code.*
" *8. What intent to defraud is sufficient.*
" *9. Civil remedies preserved.*
" *10. Proceedings to impeach or remove officers and others preserved.*
" *11. Authority of court martial preserved. Courts of justice to punish for contempt.*
" *12. Sections declaring crimes punishable. Duty of court.*
" *13. Punishments, how determined.*
" *14. Witness' testimony may be read against him on prosecution for perjury.*
" *15. "Crime" and "public offense" defined.*
" *16. Crimes, how divided.*
" *17. Felony and misdemeanor defined.*
" *18. Punishment of felony, when not otherwise prescribed.*
" *19. Punishment of misdemeanor when not otherwise prescribed.*
" *20. To constitute crime there must be unity of act and intent.*

Section 21. Intent, how manifested, and who considered of sound mind.
" *22. Drunkenness no excuse for crime. When it may be considered.*
" *23. This act how cited.*

SECTION 2. This Code takes effect at twelve o'clock noon, on the first day of————, eighteen hundred and ninety————.

SEC. 3. No part of it is retroactive, unless expressly so declared.

SEC. 4. The rule of the common law, that penal statutes are to be strictly construed, has no application to this Code. All its provisions are to be construed according to the fair import of their terms, with a view to effect its object and to promote justice.

SEC. 5. The provisions of this Code, so far as they are the same as existing statutes, must be construed as continuations thereof, and not as new enactments.

SEC. 6. No act or omission commenced after twelve o'clock noon, of the day on which this Code takes effect as a law, is criminal or punishable, except as prescribed or authorized by this Code, or by some of the statutes which it specifies as continuing in force and as not affected by its provisions, or by some ordinance, municipal, county or township regulation, passed or adopted under any such statutes, and in force when this Code takes effect. Any act or omission commenced prior to that time may be inquired of, prosecuted and punished in the same manner as if this Code had not been passed.

SEC. 7. Words used in this Code in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter; the singular number includes the plural, and the plural the singular; the word person includes a corporation as well as a natural person; writing includes printing; oath includes affirmation or declaration, and every mode of oral statement under oath or affirmation is embraced by the term "testify," and every written one in the term "depose;" signature or subscription includes mark, when the person cannot write, his name being written near it, and witnessed by a person who writes his own name as a witness. The following words, also, have in this Code the signification attached to them in this section, unless otherwise apparent from the context:

1. The word "willfully," when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act, or makes the omission referred to. It does not require any intent to violate law, or to injure another, or to acquire any advantage.

2. The words "neglect," "negligence," "negligent" and "negligently" import a want of such attention to the nature or

probable consequences of the act or omission as a prudent man ordinarily bestows in acting in his own concerns.

3. The word "corruptly" imports a wrongful design to acquire or cause some pecuniary or other advantage to the person guilty of the act or omission referred to, or to some other person.

4. The words "malice" and "maliciously" import a wish to vex, annoy or injure another person, or an intent to do a wrongful act, established either by proof or presumption of law.

5. The word "knowingly" imports only a knowledge that the facts exist which bring the act or omission within the provisions of this Code. It does not require any knowledge of the unlawfulness of such act or omission.

6. The word "bribe" signifies anything of value or advantage, present or prospective, or any promise or undertaking to give any, asked, given or accepted, with a corrupt intent to influence, unlawfully, the person to whom it is given, in his action, vote or opinion, in any public or official capacity.

7. The word "vessel," when used with reference to shipping, includes ships of all kinds, steamboats, canal boats, barges, and every structure adapted to be navigated from place to place for the transportation of merchandise or persons.

8. The words "peace officer" signify any one of the officers mentioned in Section 817 of this Code.

9. The word "magistrate" signifies any one of the officers mentioned in Section 816 of this Code.

10. The word "property" includes both real and personal property.

11. The words "real property" are co-extensive with lands, tenements and hereditaments.

12. The words "personal property" include money, goods, chattels, things in action, and evidences of debt.

13. The word "month" means a calendar month, unless otherwise expressed.

14. The word "will" includes codicils.

15. The word "writ" signifies any order or precept in writing, issued in the name of the State, or of a court or judicial officer, and the word "process," a writ or summons issued in the course of judicial proceedings.

16. Words and phrases must be construed according to the context and the approved usage of the language, but, technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in law, must be construed according to such peculiar and appropriate meaning.

17. Words giving a joint authority to three or more public officers or other persons, are construed as giving such authority to a majority of them, unless it be otherwise expressed in the act giving the authority.

18. When the seal of a court or public officer is required by

law to be affixed to any paper, the word "seal" includes an impression of such seal upon the paper alone, or upon any substance attached to the paper capable of receiving a visible impression. The seal of a private person may be made in like manner, or by the scroll of a pen, or by writing the word "seal" against his name.

19. The word "state" when applied to the different parts of the United States, includes the District of Columbia and the territorities, and the words "United States" may include the District and Territories.

SEC. 8. Whenever, by any of the provisions of this Code, an intent to defraud is required in order to constitute any offense, it is sufficient if an intent appears to defraud any person, association, or body politic or corporate, whatever.

SEC. 9. The omission to specify or affirm in this Code any liabilities to damages, penalty, forfeiture, or other remedy imposed by law, and allowed to be recovered or enforced in any civil action or proceeding, for any act or omission declared punishable herein, does not affect any right to recover or enforce the same.

SEC. 10. The omission to specify or affirm in this Code any ground of forfeiture of a public office, or other trust or special authority conferred by law, or any power conferred by law to impeach, remove, depose, or suspend any public officer or other person holding any trust, appointment, or other special authority conferred by law, does not affect such forfeiture or power, or any proceeding authorized by law to carry into effect such impeachment, removal, deposition, or suspension.

SEC. 11. This Code does not affect any power conferred by law upon any court-martial, or other military authority or officer, to impose or inflict punishment upon offenders; nor any power conferred by law upon any public body, tribunal, or officer, to impose or inflict punishment for a contempt.

SEC. 12. The several sections of this Code which declare certain crimes to be punishable as therein mentioned, devolve a duty upon the court authorized to pass sentence, to determine and impose the punishment prescribed, except in cases where a jury is authorized to determine and impose the same.

SEC. 13. Whenever in this Code the punishment for a crime is left undertermined between certain limits, the punishment to be inflicted in a particular case must be determined by the court or by the jury authorized to pass sentence, within such limits as may be prescribed by this Code.

SEC. 14. The various sections of this Code which declare that evidence obtained upon the examination of a person as a witness cannot be received against him in any criminal proceeding, do not forbid such evidence being proved against such person upon any proceedings founded upon a charge of perjury committed in such examination.

SEC. 15. A crime or public offense is an act committed or omitted in violation of a law forbidding or commanding it, and to which is annexed, upon conviction, either of the following punishments:

1. Death.
2. Imprisonment.
3. Fine.
4. Removal from office; or,
5. Disqualification to hold and enjoy any office of honor, trust, or profit in this State.

SEC. 16. Crimes are divided into:

1. Felonies; and
2. Misdemeanors.

SEC. 17. A felony is a crime which is punishable with death, or by imprisonment in the state prison. Every other crime is a misdemeanor. When a crime punishable by imprisonment in the state prison is also punishable by fine or imprisonment in a county jail, in the discretion of the court or jury, it is a misdemeanor for all purposes after a judgment imposing a punishment other than imprisonment in the state prison.

SEC. 18. Except in cases where a different punishment is prescribed by this Code, every offense declared to be a felony is punishable by imprisonment in the state prison not exceeding five years.

SEC. 19. Except in cases where a different punishment is prescribed by this Code, every offense declared to be a misdemeanor is punishable by imprisonment in a county jail not exceeding six months, or by a fine not exceeding five hundred dollars, or both.

SEC. 20. In every crime or public offense there must exist a union or joint operation of act and intent, or criminal negligence.

SEC. 21. The intent or intention is manifested by the circumstances connected with the offense, and the sound mind and discretion of the accused. All persons are of sound mind who are neither idiots nor lunatics, nor affected with insanity.

SEC. 22. No act committed by a person while in a state of voluntary intoxication is less criminal by reason of his being in such a condition. But, whenever the actual existence of any particular purpose, motive, or intent is a necessary element to constitute any particular species of degree of crime, the jury may take into consideration the fact that the accused was intoxicated at the time, in determining the purpose, motive, or intent with which he committed the act.

SEC. 23. This act, whenever cited, enumerated, referred to, or amended, may be designated simply as the Penal Code, adding, when necessary, the number of the section.

PART. I.

Crimes and Punishments.

TITLE I.

PERSONS LIABLE TO PUNISHMENT FOR CRIME.

Section 26. Who are capable of committing crimes.
" 27. Who are liable to punishment.

SEC. 26. All persons are capable of committing crimes except those belonging to the following classes:

1. Children under the age of fourteen, and over the age of seven, in the absence of clear proof that at the time of committing the act charged against them, they knew its wrongfulness. Children under the age of seven are not capable of committing crime;

2. Idiots;

3. Lunatics and insane persons;

4. Persons who committed the act or made the omission charged under an ignorance or mistake of fact, which disapproves any criminal intent;

5. Persons who committed the act charged without being conscious thereof;

6. Persons who committed the act or made the omission charged through misfortune or by accident, when it appears that there was no evil design, intention, or culpable negligence;

7. Married women (except for felonies) acting under threats, command, or coercion of their husbands;

8. Persons (unless the crime be punishable with death) who committed the act or made the omission charged under threats or menaces sufficient to show that they had reasonable cause to, and did believe their lives would be endangered if they refused.

SEC. 27. The following persons are liable to punishment under the laws of this State:

1. All persons who commit, in whole or in part, any crime within this State;

2. All who commit larceny or robbery out of this State, and bring to, or are found with the property stolen in, this State;

3. All who, being out of this State, cause or aid, advise or encourage another person to commit a crime within this State, and are afterwards found therein.

TITLE II.

PARTIES TO CRIME.

Section 30. Classification of parties to crime.
" 31. Who are principals.
" 32. Who are accessories.
" 33. Punishment of accessories.

SEC. 30. The parties to crimes are classified as
1. Principals; and
2. Accessories.

SEC. 31. All persons concerned in the commission of a crime, whether it be a felony or misdemeanor, and whether they directly commit the act constituting the offense, or aid and abet in its commission, or, not being present, have advised and encouraged its commission, and all persons counseling, advising, or encouraging children under the age of fourteen years, lunatics or idiots, to commit any crime, or who, by fraud, contrivance, or force, occasion the drunkenness of another for the purpose of causing him to commit any crime, or who, by threats, menaces, command, or coercion, compel another to commit any crime, are principals in any crime so committed.

SEC. 32. All persons who, after full knowledge that a felony has been committed, conceal it from the magistrate, or harbor or protect the person charged with or convicted thereof, are accessories.

SEC. 33. Except in cases where a different punishment is prescribed an accessory is punishable by imprisonment in the state prison not exceeding five years, or in a county jail not exceeding two years, or by fine not exceeding five thousand dollars.

TITLE III.

OFFENSES AGAINST THE SOVEREIGNTY OF THE STATE.

Section 37. Treason, who only can commit.
" 38. Misprison of treason.

SEC. 37. Treason against this State consists only in levying war against it, adhering to its enemies, or giving them aid and comfort, and can be committed only by persons owing allegiance to the State. The punishment of treason is death.

SEC. 38. Misprison of treason is the knowledge and concealment of treason, without otherwise assenting to or participating in the crime. It is punishable by imprisonment in the state prison for a term not exceeding five years.

TITLE IV.

CRIMES AGAINST THE ELECTIVE FRANCHISE.

Section 41. Violation of election laws by certain officers a felony.
" *42. Fraudulent registration a felony.*
" *43. Fraudulent voting.*
" *44. Attempting to vote without being qualified.*
" *45. Procuring illegal voting.*
" *46. Changing ballots or altering returns by election officers.*
" *47. Judges unfolding or marking tickets.*
" *48. Forging or altering returns.*
" *49. Adding to or subtracting from votes given.*
" *50. Persons aiding and abetting.*
" *51. Intimidating, corrupting, deceiving or defrauding electors.*
" *52. Offenses under the election laws.*
" *53. Officers of election not to electioneer, etc.*
" *54. Offenses at an election.*
" *55. Furnishing money for electors.*
" *56. Unlawful offer to appoint to office.*
" *57. Communication of same.*
" *58. Bribing members of legislative caucuses, etc.*
" *59. Preventing public meetings of electors.*
" *60. Disturbance of public meetings of electors.*
" *61. Betting on elections.*
" *62. Violation of election laws.*
" *63. Not to sell liquor on election day.*

SEC. 41. Every person charged with the performance of any duty, under the provisions of any law of this State relating to elections, or the registration of the names of electors, or the canvassing of the returns of election, who willfully neglects or refuses to perform such duty, or who in his official capacity, knowingly and fraudulently acts in contravention or violation of any of the provisions of such laws, is, unless a different punishment for such acts or omissions is prescribed by this Code, punishable by fine not exceeding one thousand dollars, or by imprisonment in the state prison not exceeding five years, or both.

SEC. 42. Every person who willfully causes, procures, or allows himself to be registered in the official register of any election district of any county, knowing himself not to be entitled to such registration, is punishable by a fine not exceeding one thousand dollars, or by imprisonment in the county jail or state prison not exceeding one year or both. In all cases where, on the trial of the person charged with any offense under the provisions of this section, it appears in evidence that the accused stands registered in such register of any county, without being qualified for such registration, the court must order such registration to be cancelled.

SEC. 43. Every person not entitled to vote, who fraudulently votes, and every person who votes more than once at any one election, or changes any ballot after the same has been deposited in the ballot box, or adds, or attempts to add, any ballot to those legally polled at any election, either by fraudulently introducing the same into the ballot box before or after the ballots therein have been counted; or adds to, or mixes with, or attempts to add to or mix with, the ballots lawfully polled, other ballots, while the same are being counted or canvassed, or at any other time, with intent to change the result of such election; or carries away or destroys, or attempts to carry away or destroy, any poll-lists, check-lists, or ballots, or ballot box, for the purpose of breaking up or invalidating such election, or willfully detains, mutilates, or destroys any election returns, or in any manner so interferes with the officers holding such election or conducting such canvass, or with the voters lawfully exercising their rights or voting at such election, as to prevent such election or canvass from being fairly held and lawfully conducted, is guilty of a felony.

SEC. 44. Every person not entitled to vote, who fraudulently attempts to vote or register, or who, being entitled to vote, attempts to register or vote more than once at any election, is guilty of a misdemeanor.

SEC. 45. Every person who procures, aids, assists, counsels, or advises another to register or give or offer his vote at any election, knowing that the person is not entitled to vote or register, is guilty of a misdemeanor.

SEC. 46. Every officer or clerk of election who aids in changing or destroying any poll-list or check-list, or in placing any ballots in the ballot-box, or taking any therefrom, or adds, or attempts to add, any ballots to those legally polled at such election, either by fraudently introducing the same into the ballot-box before or after the ballots therein have been counted, or adds to or mixes with, or attempts to add to or mix with the ballots polled any other ballots, while the same are being counted or canvassed, or at any other time, with intent to change the result of such election, or allows another to do so, when in his power to prevent it, or carries away or destroys, or knowingly allows another to carry away or destroy any poll-list, check-list, ballot-box, or ballots lawfully polled, is guilty of a felony.

SEC. 47. Every judge or clerk of an election, who, previous to putting the ballot of an elector in the ballot-box, attempts to find out any name on such ballot, or who opens or suffers the folded ballot of any elector which has been handed in, to be opened or examined previous to putting the same in to the ballot-box, or who makes or places any mark or device on any folded ballot, with the view to ascertain the name of any person for whom the elector has voted, is punishable by imprisonment in the County Jail for a period of six months or in the State prison not exceeding two years, or by fine, not exceeding five hundred dollars, or by both.

SEC. 48. Every person who forges or counterfeits returns of an election purporting to have been held at a precinct, town, or ward where no election was in fact held, or willfully substitutes forged or counterfeit returns of election in the place of the true returns, for a precinct, town, or ward where an election was actually held, is punishable by imprisonment in the State prison for a term not less than two nor more than ten years.

SEC. 49. Every person who willfully adds to or subtracts from the votes actually cast at an election, in any returns, or who alters such returns, is punishable by imprisonment in the State prison for not less than one nor more than five years.

SEC. 50. Every person who aids or abets in the commission of any of the offenses mentioned in the four preceding sections is punishable by imprisonment in the County jail for a period of six months or in the State prison not exceeding two years.

SEC. 51. Every person, who by force, threats, menaces, bribery, or any corrupt means, either directly or indirectly, attempts to influence any elector in giving his vote, or to deter him from giving the same, or attempts by any means whatever to awe, restrain, hinder, or disturb any elector in the free exercise of the right of suffrage, or defrauds any elector at any such election, by deceiving and causing such elector to vote for a different person for any office than he intended or desired to vote for; or who, being judge or clerk of any election, while acting as such, induces or attempts to induce, any elector, either by menaces or reward, or promise thereof, to vote differently from what such elector intended or desired to vote, is guilty of a misdemeanor, and is punishable by a fine not exceeding one thousand dollars or imprisonment not to exceed one year, or both.

SEC. 52. Every person who falsely makes, or fraudently defaces or destroys the certificates of nomination of candidates for office, to be filled by the electors at any election, or any part thereof, or files or receives for filing any certificate of nomination, knowing the same, or any part thereof, to be falsely made, or suppresses any certificate of nomination, which has been duly filed, or any part thereof, or forges or falsely makes the official endorsement on any ballot, is guilty of a felony and upon conviction thereof is punishable by imprisonment in the State prison not less than one nor more than five years.

SEC. 53. Every officer or clerk of election who deposits in a ballot-box, a ballot on which the official stamp, as provided by law, does not appear, or does any electioneering on election day, is guilty of a misdemeanor and upon conviction is punishable by imprisonment not to exceed six months, or by a fine not less than fifty nor more than five hundred dollars, or both.

SEC. 54. Every person who, during an election, removes or destroys any of the supplies or other conveniences, placed in the booths or compartments, for the purpose of enabling a voter to prepare his ballot, or prior to or on the day of election willfully defaces or destroys any list of candidates posted in accordance with the provisions of law, or during an election tears down or defaces the cards printed for the instruction of voters, or does any electioneering on election day within any polling place or any building in which an election is being held, or within twenty-five feet thereof, or obstructs the doors or entries thereof, or removes any ballot from the polling place before the closing of the polls, or shows his ballot to any person after it is marked so as to reveal the contents thereof, or solicits an elector to show his ballot after it is marked, or places a mark on his ballot by which it may afterward be identified, or receives a ballot from any other person than one of the judges of the election having charge of the ballots, or votes or offers to vote any ballot except such as he has received from the judges of election having charge of the ballots, or does not return the ballot before leaving the polling place delivered to him by such judges and which he has not voted, is guilty of a misdemeanor and is punishable by a fine not exceeding one hundred dollars.

SEC. 55. Every person who, with the intention to promote the election of himself or any other person, either:

1. Furnishes entertainments, at his expense, to any meeting of electors previous to or during an election;

2. Pays for, procures, or engages to pay for any such entertainment;

3. Furnishes or engages to pay any money or property for the purpose of procuring the attendance of voters at the polls, or for the purpose of compensating any person for procuring the attendance of voters at the polls, except for the conveyance of voters who are sick or infirm;

4. Furnishes or engages to pay or deliver any money or property for any purpose intended to promote the election of any candidate, except for the expenses of holding and conducting public meetings for the discussion of public questions, and of printing and circulating ballots, handbills, and other papers, previous to such election; is guilty of a misdemeanor.

SEC. 56. Every person who, being a candidate at any election, offers or agrees to appoint or procure the appointment of any particular person to office, as an inducement or consideration to any person to vote for, or to procure or aid in procuring the election of such candidate, is guilty of a misdemeanor.

SEC. 57. Every person, not being a candidate, who communicates any offer, made in violation of the last section, to any person, with intent to induce him to vote for, or to procure or to aid in procuring the election of the candidate making the offer, is guilty of a misdemeanor.

SEC. 58. Every person who gives or offers a bribe to any officer or member of any legislative caucus, political convention, or political gathering or any kind, held for the purpose of nominating candidates for offices of honor, trust, or profit, in this state, with intent to influence the person to whom such bribe is given or offered to be more favorable to one candidate than other, and every person, member of either of the bodies in this section mentioned, who receives or offers to receive any such bribe, is punishable by imprisonment in the state prison not less than one nor more than fourteen years.

SEC. 59. Every person who, by threats, intimidations, or violence, willfully hinders or prevents electors from assembling in public meeting for the consideration of public questions, is guilty of a misdemeanor.

SEC. 60. Every person who willfully disturbs or breaks up any public meeting of electors or others, lawfully being held for the purpose of considering public questions any public school or public school meeting is guilty of a misdemeanor.

SEC. 61. Every person who makes, offers, or accepts any bet or wager upon the result of any election, or upon the success or failure of any person or candidate, or upon the number of votes to be cast, either in the aggregate or for any particular candidate, or upon the vote to be cast by any person, is guilty of a misdemeanor.

SEC. 62. Every person who willfully violates any of the provisions of the laws of this state relating to elections is, unless a different punishment for such violation is prescribed by this Code, punishable by fine not exceeding one thousand dollars, or by imprisonment in the state prison not exceeding five years, or both.

SEC. 63. Every person who sells, gives away, or furnishes, spirituous or malt liquors, cider, wine, or any other intoxicating beverages on any part of any day set apart for any general or special or municipal election during the hours when by law the polls are required to be kept open, is guilty of a misdemeanor, and punishable by imprisonment not exceeding six months or by fine not less than fifty nor more than five hundred dollars, or both.

TITLE V.

CRIMES BY AND AGAINST THE EXECUTIVE POWER OF THE STATE.

Section 65. Acting in a public capacity without having qualified.
" 66. Acts of officers de facto not affected.

" 67. *Giving or offering bribes to executive officers.*
" 68. *Asking or receiving bribes.*
" 69. *Resisting officers.*
" 70. *Extortion.*
" 71. *Officers illegally interested in contracts.*
" 72. *Presenting fraudulent bills or claims for allowance or payment.*
" 73. *Buying appointments to office.*
" 74. *Taking rewards for deputation.*
" 75. *Exercising functions of office wrongfully.*
" 76. *Refusal to surrender books, etc., to successor.*
" 77. *Sections to apply to administrative and ministerial officers.*
" 78. *School officers and teachers not to act as agents for publishers, etc.*

SEC. 65. Every person who exercise any function of a public office without taking the oath of office, or without giving the required bond, is guilty of a misdemeanor.

SEC. 66. The last section does not affect the validity of acts done by a person exercising the functions of a public office in fact, where other persons than himself are interested in maintaining the validity of such acts.

SEC. 67. Every person who gives or offer any bribe to any executive officer of this state, with intent to influence him in respect to any act, decision, vote, opinion, or other proceeding as such officer, is punishable by imprisonment in the state prison not less than one nor more than ten years, and is disqualified from holding any office in this state.

SEC. 68. Every executive officer or person elected or appointed to an executive office, who asks, receives or agrees to receive, any bribe, upon any agreement or understanding that his vote, opinion or action upon any matter then pending, or which may be brought before him in his official capacity, shall be influenced thereby, is punishable by imprisonment in the state prison not less than one nor more than fourteen years; and, in addition thereto, forfeits his office, and is forever disqualified from holding any office in this state.

SEC. 69. Every person who attempts by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed upon such officer by law, or who knowingly resists, by the use of force or violence, such officer in the performance of his duty, is punishable by fine not exceeding five thousand dollars, and imprisonmen in the county jail not exceeding five years.

SEC. 70. Every executive or ministerial officer who knowingly asks or receives any emolument, gratuity, or reward, or any promise thereof, except such as may be authorized by law, for doing any official act, is guilty of a misdemeanor.

SEC. 71. Every officer or person prohibited by the laws of this state from making or being interested in contracts, or from becoming a vendor or purchaser at sales, or from purchasing scrip, or other evidences of indebtedness, who violates any of the provisions of such laws, is punishable by a fine of not more than one thousand dollars, or by imprisonment in the county jail or state prison not more than five years, and is forever disqualified from holding any office in this state.

SEC. 72. Every person who, with intent to defraud, presents for allowance or for payment to any state board or officer, or to any county, town, city, ward, or board or officer, authorized to allow or pay the same if genuine, any false or fraudulent claim, bill, account, voucher or writing, is guilty of felony.

SEC. 73. Every person who gives or offers any gratuity or reward, in consideration that he or any other person shall be appointed to any public office, or shall be permitted to exercise or discharge the duties thereof, is guilty of a misdemeanor.

SEC. 74. Every public officer, who for any gratuity or reward, appoints another person to a public office or permits another person to exercise or discharge any of the duties of his office, is punishable by a fine not exceeding five thousand dollars, and, in addition thereto, forfeits his office, and is forever disqualified from holding any office in this state.

SEC. 75. Every person who willfully and knowingly intrudes himself into any public office to which he has not been elected or appointed, and every person who, having been an executive officer, willfully exercises any of the functions of his office after his term has expired, and a successor has been elected or appointed and has qualified, is guilty of a misdemeanor.

SEC. 76. Every officer whose office is abolished by law, or who, after the expiration of the time for which he may be appointed or elected, or after he has resigned or been legally removed from office, willfully and unlawfully withholds or detains from his successor, or other person entitled thereto, the records, papers, documents, or other writing apertaining or belonging to his office, or wrongfully refuses to surrender the official seal, or mutilates, destroys, or takes away the same, is guilty of a misdemeanor and is punishable by a fine not exceeding two thousand dollars or by imprisonment not exceeding one year, or both.

SEC. 77. The various provisions of this chapter apply to administrative and ministerial officers, in the same manner as if they were mentioned therein.

SEC. 78. Every person who violates any of the provisions of Section 1318 of the Political Code relating to school officers and teachers, and prohibiting them from acting as agents, etc., is guilty of a misdemeanor.

TITLE VI.

CRIMES AGAINST THE LEGISLATIVE POWER.

Section 81. Preventing the meeting of the Legislative Assembly.
" 82. Disturbing the Legislative Assembly while in session.
" 83. Altering draft of bill or resolution.
" 84. Altering enrolled copy of bill or resolution.
" 85. Giving or offering bribes to members of the Legislative Assembly.
" 86. Receiving bribes by members of the Legislative Assembly.
" 87. Solicitation of bribes.
" 88. Bribery.
" 89. Same.
" 90. Defination of lobbying.
" 91. Personal interest in bill.
" 92. Witnesses refusing to attend, etc., before the Legislative Assembly.
" 93. Penalty.

SEC. 81. Every person who willfully, and by force and fraud, prevents the Legislative Assembly of this State, or either of the houses composing it, or any of the members thereof, from meeting or organizing, is guilty of felony.

SEC. 82. Every person who willfully disturbs the Legislative Assembly of this State, or either of the houses composing it, while in session, or who commits any disorderly conduct in the immediate view and presence of either house, tending to interrupt its proceedings or impair the respect due its authority, is guilty of a misdemeanor.

SEC. 83. Every person who fraudulently alters the draft of any bill or resolution which has been presented to either of the houses composing the Legislative Assembly, to be passed or adopted, with intent to procure it to be passed or adopted by either house, or certified by the presiding officer of either house, in language different from that intended by such house, is guilty of felony.

SEC. 84. Every person who fraudulently alters the engrossed copy or enrollment of any bill or resolution which has been passed or adopted by the Legislative Assembly of this State, with intent to procure it to be approved by the governor, or certified by the secretary of state, or printed or published by the printer of statutes, in language different from that in which it was passed or adopted by the Legislative Assembly, is guilty of felony.

SEC. 85. Every person who gives or offers a bribe to any member of the Legislative Assembly or to another person for him, or attempts by menace, deceit, suppression of truth, or any corrupt means, to influence a member in giving or withholding his vote, or in not attending the house or any committee of which he is a member, is punishable by imprisonment in the state prison not less than one nor more than ten years.

SEC. 86. Every member of either of the houses composing the Legislative Assembly of this State who asks, receives or agrees to receive any bribe, upon any understanding that his official vote, opinion, judgment, or action shall be influenced thereby, or shall be given in any particular manner, or upon any particular side of any question or matter upon which he may be required to act in his official capacity, or gives or offers, or promises to give any official vote in consideration that another member of the Legislative Assembly shall give any such vote, either upon the same or another question, is punishable by imprisonment in the state prison not less than one nor more than ten years.

SEC. 87. Every person elected to either house of the Legislative Assembly who offers or promises to give his vote or influence in favor of or against any measure or proposition, pending or proposed to be introduced into the Legislative Assembly, in consideration or upon condition that any other person elected to the same Legislative Assembly will give, or will promise or assent to give, his vote or influence, in favor of or against any other measure or proposition, pending or proposed to be introduced into such Legislative Assembly, the person making such offer or promise is guilty of solicitation of bribery, and is punishable in the state prison not less than one year nor mor than ten years.

SEC. 88. Every member of the Legislative Assembly who gives his vote or influence for or against any measure or proposition pending or proposed to be introduced in such Legislative Assembly, or offers, promises, or assents to give, upon condition that any other member will give, or will promise or assent to give, his vote or influence in favor of or against any other measure or proposition pending or proposed to be introduced in such Legislative Assembly, or in consideration that any other member hath given his vote or influence for or against any other measure or proposition in such Legislative Assembly, is guilty of bribery, and is punishable in the state prison not less than one nor more than ten years.

SEC 99. Every person who directly or indirectly offers, gives, or promises any money or thing of value, testimonial, privilege, or personal advantage, to any executive or judicial officer or member of the Legislative Assembly, or to any public officer of the State or of any municipal division thereof, to influence him in the performance of any of his official or public duties, is guilty of bribery and is punishable in the State prison not less than one nor more than ten years.

SEC. 90. Every person who corruptly solicits directly or indirectly the official action of any member of the Legislative

Assembly or of any public officer of the State, or of any municipal division thereof, is guilty of the occupation and practice of solicitation of bribery, and is punishable in the state prison not less than one nor more than ten years.

SEC. 91. Every member of the Legislative Assembly who has a personal or private interest in any measure or bill, proposed or pending before the Legislative Assembly of which he is a member, and does not disclose the fact to the house of which he is a member, and votes thereon, is guilty of a misdemeanor.

SEC. 92. Every person who, being summoned to attend as a witness before either house of the Legislative Assembly or any committee thereof, refuses or neglects, without lawful excuse, to attend pursuant to such summons, and every person who, being present before either house of the Legislative Assembly, or any committee thereof, willfully refuses to be sworn, or to answer any material and proper question, or to produce, upon reasonable notice, any material and proper books, papers or documents in his possession or under his control, is guilty of a misdemeanor.

SEC. 93. Every person who obtains, or seeks to obtain money or other thing of value from another person upon a pretense, claim or representation that he can or will improperly influence in any manner the action of any member of any legislative body in regard to any vote or legislative matter is guilty of felony. Upon the trial no person, otherwise competent as a witness, shall be excused from testifying as such concerning the offense charged, on the ground that such testimony may criminate himself, or subject him to public infamy, but such testimony shall not afterward be used against him in any judicial proceeding, except for perjury in giving such testimony.

SEC. 94. Every member of the Legislative Assembly convicted of any crime defined in this title, in addition to the punishment prescribed, forfeits his office, and is forever disqualified from holding any office in this State.

TITLE VII.

CRIMES AGAINST PUBLIC JUSTICE.

Chapter I. Bribery and corruption.
" *II. Rescues.*
" *III. Escapes and aiding therein.*
" *IV. Forging, stealing, mutilating and falsifying judicial and public records and documents.*
" *V. Perjury and subornation of perjury.*
" *VI. Falsifying evidence.*
" *VII. Other offenses against public justice.*
" *VIII. Conspiracy.*

CHAPTER I.

BRIBERY AND CORRUPTION.

Section 100. Giving bribes to judges, jurors, referees, etc.
" 101. Receiving bribes by judicial officers, jurors, etc.
" 102. Extortion.
" 103. Improper attempts to influence jurors, referees, etc.
" 104. Misconduct of jurors, referees, etc.
" 105. Embracery.
" 106. Misconduct of officers having charge of jury.
" 107. Justice or constable purchasing judgment.
" 108. Officers convicted, disfranchised.
" 109. Bribery of school trustees.
" 110. Offender a competent witness.

SEC. 100. Every person who gives, or offers to give a bribe to any judicial officer, juror, referee, arbitrator, umpire, appraiser or assessor, or to any person who may be authorized by law to hear or determine any question or controversy, with intent to influence his vote, opinion, or decision upon any matter or question. which is or may be brought before him for decision, is punishable by imprisonment in the State prison not less than one nor more than ten years.

SEC. 101. Every judicial officer, juror, referee, arbitrator, umpire, appraiser or assessor, and every person authorized by law to hear or determine any question or controversy, who asks, receives or agrees to receive any bribe upon any agreement or understanding that his vote, opinion, judgment, action, decision or other official proceeding upon any matter or question which is or may be brought before him for decision, shall be influenced thereby, is punishable by imprisonment in the State prison not less than one nor more than ten years.

SEC. 102. Every judicial officer who asks or receives any emolument, gratuity or reward, or any promise thereof, except such as may be authorized by law, for doing any official act, is guilty of a felony.

SEC. 103. Every person who corruptly attempts to influence a juror, or any person summoned or drawn as a juror, or chosen as an arbitrator or umpire, or appointed a referee, in respect to his verdict in, or decision of, any cause or proceeding, pending or about to be brought before him, either

1. By means of any communication, oral or written, had with him except in the regular course of proceedings.

2. By means of any book, paper or instrument exhibited, otherwise than in the regular course of proceedings.

3. By means of any threat, intimidation, persuasion or entreaty, or

4. By means of any promise, assurance of any pecuniary or other advantage, is punishable by fine not exceeding five

thousand dollars, or by imprisonment in the State prison not exceeding five years.

SEC. 104. Every juror, or person summoned or drawn as a juror, or chosen arbitrator or umpire, or appointed referee, who either

1. Makes any promise or agreement to give any verdict or decision for or against any party, or

2. Willfully and corruptly permits any communication to be made to him, or receives any book, paper, instrument or information relating to any cause or matter pending before him, except according to the regular course of proceedings, is punishable by fine not exceeding five thousand dollars, or by imprisonment in the state prison not exceeding five years.

SEC. 105. Every person who influences, or attempts to influence, improperly a juror in a civil or criminal action or proceeding, or one drawn or summoned to attend as a juror, or one chosen as an arbitrator, or appointed a referee, in respect to his verdict, judgment, report, award, or decision in any cause or matter pending or about to be brought before him in any case, is punishable as provided in Section 103.

SEC. 106. Every officer to whose charge a jury is committed by a court or judge, who negligently or willfully permits them, or any of them, without leave of the court or judge:

1. To receive any communication from any person;
2. To make any communication to any person;
3. To obtain or receive any book or paper or refreshment; or,
4. To leave the jury room;

Is guilty of a misdemeanor.

SEC. 107. Every justice of the peace, or constable of the same township, who purchases or is interested in the purchase of any judgment, or part thereof, on the docket of, or on any docket in the possession of, such justice, is guilty of a misdemeanor.

SEC 108. Every officer convicted of any crime defined in this chapter, in addition to the punishment prescribed, forfeits his office and is forever disqualified from holding any office in this state.

SEC. 109. The offering of any valuable thing to any member of a Board of Education, school trustee or other school officer with the the intent thereby to influence his action in regard to the granting of any teacher's certificate, the appointment of any teacher, superintendent, or other officer or employee, the adoption of any text-book, or the making of any contract to which a Board of Education, school trustees or other officer, be a party, or the acceptance by any member of a board or officer of any valuable thing, with corrupt intent, shall be a felony, and shall be punished by a fine not exceeding one thousand dollars, or by imprisonment in the penitentiary not exceeding one year, or by both such fine and imprisonment; and the person so convicted shall be forever disqualified from holding any office of trust or profit.

SEC. 110. A person offending against any provision of any section of this Code relating to bribery, is a competent witness against another person so offending, and may be compelled to attend and testify on any trial, hearing, proceeding or investigation in the same manner as any other person; but the testimony so given shall not be used in any prosecution or proceeding, civil or criminal, against the person so testifying. A person so testifying to the giving of a bribe which has been accepted, shall not thereafter be liable to indictment, prosecution, or punishment for that bribery, and may plead or prove the giving of testimony accordingly in bar of such indictment or prosecution.

CHAPTER II.

RESCUES.

Section 115. Rescuing prisoners.
" *116. Retaking goods from custody of officer.*

SEC. 115. Every person who rescues, or attempts to rescue, or aids another person in rescuing or attempting to rescue, any prisoner from any prison or jail, or from any officer or person having him in lawful custody, is punishable as follows:

1. If such prisoner was in custody upon a conviction of felony punishable by death; by imprisonment in the state prison not less than one nor more than fourteen years.

2. If such prisoner was in custody upon a conviction of any other felony; by imprisonment in the state prison not less than six months, nor more than five years.

3. If such prisoner was in custody upon a charge of felony; by a fine not exceeding one thousand dollars, and imprisonment in the county jail not exceeding two years.

4. If such prisoner was in custody otherwise than upon a charge or conviction of felony; by fine not exceeding five hundred dollars, and imprisonment in the county jail not exceeding six months.

SEC. 116. Every person who willfully injures or destroys, or takes or attempts to take, or assists any person in taking or attempting to take, from the custody of any officer or person, any personal property which such officer or person has in charge under any process of law, is guilty of a misdemeanor.

CHAPTER III.

ESCAPES, AND AIDING THEREIN.

Section 118. Escapes from state prison.
" *119. Attempt to escape from state prison.*
" *120. Escapes from other state prisons.*

Section 121. Officers suffering convicts to escape.
" *122. Assisting prisoner to escape.*
" *123. Carrying into prison things useful to aid in an escape.*
" *124. Expense of trial for escape.*

SEC. 118. Every prisoner confined in state prison for a term less than for life, who escapes therefrom, is punishable by imprisonment in the state prison for a term not less than one year nor more than ten years; said second term of imprisonment to commence from the time he would have otherwise been discharged from said prison.

SEC. 119. Every prisoner confined in the state prison for a term less than for life, who attempts to escape from such prison, is punishable by imprisonment in the state prison for a term not less than one nor more than ten years, and, on conviction thereof, the term of imprisonment therefor shall commence from the time such convict would otherwise have been discharged from said prison.

SEC. 120. Every prisoner confined in any other prison than the state prison, who escapes or attempts to escape therefrom, is guilty of a misdemeanor.

SEC. 121. Every keeper of a prison, sheriff, deputy sheriff, constable or jailer, or person employed as a guard, who fraudulently contrives, procures, aids, connives at, or voluntarily permits the escape of any prisoner in custody, is punishable by imprisonment in the state prison not exceeding ten years, and fine not exceeding ten thousand dollars.

SEC. 122. Every person who willfully assists any prisoner confined in any prison, or in the lawful custody of any officer or person, to escape, or in an attempt to escape from such prison or custody, is punishable as provided in the preceding section.

SEC. 123. Every person who carries or sends into a prison anything useful in aiding a prisoner to make his escape, with intent thereby to facilitate the escape of any prisoner confined therein, is punishable as provided in Section 121 of this Code.

SEC. 124. Whenever a trial takes place of any person under any of the provisions of Sections 118 and 119 of this Code, and whenever a prisoner in the state prison shall be tried for any crime committed therein, the county clerk of the county where such trial is had shall make out a statement of all the costs incurred by the county for the trial of such case, and of guarding and keeping such prisoner, properly certified by a district judge of said county, which statement shall be sent to the board of state prison commissioners for their approval; and after such approval, said board must cause the amount of such costs to be paid out of the money appropriated for the support of the state prison, to the county treasurer of the county where such trial was had.

CHAPTER IV.

FORGING, STEALING, MUTILATING AND FALSIFYING JUDICIAL AND PUBLIC RECORDS AND DOCUMENTS.

Section 127. Larceny, destruction, etc., of records by officers.
" *128. Larceny, destruction, etc., of records by others.*
" *129. Offering forged or false instruments to be recorded.*
" *130. Adding names, etc., to jury lists.*
" *131. Falsifying jury lists, etc.*

SEC. 127. Every officer having the custody of any record, map or book, or of any paper, or proceeding of any court, filed or deposited in any public office, or placed in his hands for any purpose, who is guilty of stealing, willfully destroying, mutilating, defacing, altering or falsifying, removing or secreting the whole or any part of such record, map, book, paper or proceeding, or who permits any other person so to do, is punishable by imprisonment in the state prison not less than one nor more than fourteen years.

SEC. 128. Every person not an officer such as is referred to in the preceding section, who is guilty of any of the acts specified in that section, is punishable by imprisonment in the state prison not exceeding five years, or in a county jail not exceeding one year, or by a fine not exceeding one hundred dollars, or both.

SEC. 129. Every person who knowingly procures or offers any false or forged instrument to be filed, registered or recorded in any public office within the State, which instrument, if genuine, might be filed or registered, or recorded under any law of this State, or of the United States, is guilty of felony.

SEC. 130. Every person who adds any names to the list of persons selected to serve as jurors for the county, either by placing the same in the jury-box, or boxes, or otherwise, or extracts any name therefrom, or destroys the jury-box or boxes, or any of the pieces of paper containing the names of jurors, or mutilates or defaces such names so that the same cannot be read, or changes such names on the pieces of paper, except in cases allowed by law, is guilty of a felony.

SEC. 131. Every officer or person required by law to certify to the list of persons selected as jurors, who maliciously, corruptly, or willfully certifies to a false and incorrect list, or a list containing other names than those selected, or who, being required by law to write down the names placed on the certified lists on separate pieces of paper, does not write down and place in the jury-box or boxes, the same names that are on the certified list, and no more and no less than are on such lists, is guilty of a felony.

CHAPTER V.

PERJURY AND SUBORNATION OF PERJURY.

Section 134. Perjury defined.
" 135. Oath defined.
" 136. Oath of office.
" 137. Irregularity in administering.
" 138. Incompetency of witness no defense.
" 139. Knowledge of materiality of testimony not necessary.
" 140. Making depositions, etc., when deemed complete.
" 141. Statement of that which one does not know to be true.
" 142. Punishment of perjury.
" 143. Subornation of perjury.
" 144. Procuring the execution of innocent persons.

SEC. 134. Every person who, having taken an oath that he will testify, declare, depose or certify truly before any competent tribunal, officer or person, in any of the cases in which an oath may by law be administered, willfully and contrary to such oath states as true any material matter which he knows to be false, is guilty of perjury.

SEC. 135. The term "oath" as used in the last section, includes an affirmation and every mode authorized by law of attesting the truth of that which is stated.

SEC. 136. So much of an oath of office as relates to the future performance of official duties is not such an oath as is intended by the two preceding sections.

SEC. 137. It is no defense to a prosecution for perjury that the oath was administered or taken in an irregular manner.

SEC. 138. It is no defense to a prosecution for perjury that the accused was not competent to give the testimony, deposition, or certificate of which falsehood is alleged. It is sufficient that he did give such testimony or make such deposition or certificate.

SEC. 139. It is no defense to a prosecution for perjury that the accused did not know the materiality of the false statement made by him; or that it did not in fact affect the proceeding in or for which it was made. It is sufficient that it was material, and might have been used to affect such proceeding.

SEC 140. The making of a deposition or certificate is deemed to be complete, within the provisions of this chapter, from the time when it is delivered by the accused to any other person, with the intent that it be uttered or published as true.

SEC 141. An unqualified statement of that which one does not know to be true is equivalent to a statement of that which one knows to be false.

SEC. 142. Perjury is punishable by imprisonment in the State prison not less than one nor more than fourteen years.

SEC 143. Every person who willfully procures another person to commit perjury is guilty of subornation of perjury, and is punishable in the same manner as he would be if personally guilty of the perjury so procured.

SEC. 144. Every person who, by willful perjury, or subornation of perjury, procures the conviction and execution of any innocent person, is punishable by death.

CHAPTER VI.

FALSIFYING EVIDENCE.

Section 147. Offering false evidence.
" *148. Deceiving a witness.*
" *149. Preparing false evidence.*
" *150. Destroying evidence.*
" *151. Preventing or dissuading witness from attending.*
" *152. Bribing witness.*
" *153. Receiving or offering to receive bribes.*

SEC. 147. Every person who, upon any trial, proceeding, inquiry, or investigation whatever, authorized or permitted by law, offers in evidence, as genuine or true, any book, paper, document or record, or other instrument in writing, knowing the same to have been forged, or fraudently altered or antedated, is guilty of felony.

SEC. 148. Every person who practices any fraud or deceit or knowingly makes or exhibits any false statement, representation, token, or writing, to any witness or any person about to be called as a witness upon any trial, proceeding, inquiry, or investigation whatever, authorized by law, with intent to affect the testimony of such witness, is guilty of a misdemeanor.

SEC. 149. Every person guilty of preparing any false or ante-dated book, paper, record, instrument in writing, or other matter or thing, with intent to produce or allow it to be produced for any fraudulent or deceitful purpose, as genuine or true, upon any trial, proceeding or inquiry whatever authorized by law, is guilty of felony.

SEC. 150. Every person who, knowing that any book, paper, instrument in writing, or other matter or thing, is about to be produced in evidence upon any trial, inquiry or investigation whatever, authorized by law, willfully destroys or conceals the same, with intent thereby to prevent it from being produced, is guilty of a misdemeanor.

SEC. 151. Every person who willfully prevents or dissuades any person who is or may become a witness, from attending upon any trial, proceeding or inquiry, authorized by law, is guilty of a misdemeanor.

SEC. 152. Every person who gives or offers or promises to give, to any witness or person about to be called as a witness, any bribe, upon any understanding or agreement that the testimony of such witness shall be thereby influenced, or who attempts by any other means fraudulently to induce any person to give false or withhold true testimony, is guilty of a felony.

SEC. 153. Every person who is a witness, or is about to be called as such, who receives, or offers to receive, any bribe, upon any understanding that his testimony shall be influenced thereby, or that he will absent himself from the trial or proceeding upon which his testimony is required, is guilty of felony.

CHAPTER VII.

OTHER OFFENSES AGAINST PUBLIC JUSTICE.

Section 157. Officer refusing to arrest parties charged with crime.
" *158. Public administrator, neglect or violation of duty by.*
" *159. Receiving fee for services in arresting fugitives.*
" *160. Delaying to take person arrested before a magistrate.*
" *161. Making arrest, etc., without lawful authority.*
" *162. Inhumanity to prisoners.*
" *163. Resisting public officers in the discharge of their duties.*
" *164. Assault, etc., by officers under color of authority.*
" *165. Refusing to aid officers in arrest, etc.*
" *166. Compounding crimes.*
" *167. Debtor fraudulently concealing his property.*
" *168. Defendant fraudulently concealing his property.*
" *169. Fraudulent pretenses relative to birth of infant.*
" *170. Substituting one child for another.*
" *171. Common barratry defined, how punished.*
" *172. What proof is required.*
" *173. Misconduct by attorneys.*
" *174. Buying demands or suit by an attorney.*
" *175. Attorneys forbidden to defend prosecutions carried on by their partners or formerly by themselves.*
" *176. Limitation of preceding section.*
" *177. Grand juror acting after challenge has been allowed.*
" *178. Bribing boards of county commissioners.*
" *179. Criminal contempts.*
" *180. False certificates of public officers.*
" *181. Disclosing fact of indictment having been found.*
" *182. Disclosing what transpired before the grand jury.*
" *183. Maliciously procuring search warrant.*
" *184. Unauthorized communication with convict.*

Section 185. Omission of duty by public officer.
" *186. Offense for which no penalty is prescribed.*
" *187. Oppression and injury by an officer.*

SEC. 157. Every sheriff, coroner, keeper of a jail, constable, or other peace officer, who willfully refuses to receive or arrest any person charged with a criminal offense, is punishable by fine not exceeding five thousand dollars, and imprisonment in the county jail not exceeding five years.

SEC. 158. Every person holding the office of public administrator, who willfully refuses or neglects to perform the duties thereof, or who violates any provision of law relating to his duties or the duties of his office, for which some other punishment is not prescribed, is punishable by fine not exceeding five thousand dollars, or imprisonment in the county jail not exceeding two years, or both.

SEC. 159. Every person who violates any of the provisions of section 1793 is guilty of a misdemeanor.

SEC. 160. Every public officer or other person having arrested any person upon a criminal charge, who willfully delays to take such person before a magistrate having jurisdiction, to take his examination, is guilty of a misdemeanor.

SEC. 161. Every public officer, or person pretending to be a public officer, who, under the pretense or color of any process or other legal authority, arrests any person or detains him against his will, or seizes or levies upon any property, or dispossesses any one of his lands or tenements, without a regular process or lawful authority therefor, is guilty of a misdemeanor.

SEC. 162. Every officer who is found guilty of willful inhumanity or oppression toward any prisoner under his care or in his custody, is punishable by fine not exceeding two thousand dollars, and by removal from office.

SEC. 163. Every person who willfully resists, delays, or obstructs any public officer, in the discharge or attempt to discharge any duty of his office, when no other punishment is prescribed, is punishable by fine not exceeding five thousand dollars, and imprisonment in the county jail not exceeding five years.

SEC. 164. Every public officer who under color of authority, without lawful necessity, assaults or beats any person, is punishable by fine not exceeding five thousand dollars, and imprisonment in the county jail not exceeding five years.

SEC. 165. Every male person above the age of eighteen years who neglects or refuses to join the posse comitatus, or power of the county, by neglecting or refusing to aid and assist in taking or arresting any person against whom there may be issued any process, or by neglecting to aid and assist in retaking any person who, after being arrested or confined, may have escaped from such arrest or imprisonment, or by neglecting or refusing to aid and assist in preventing any breach of the peace, or the commission of any criminal offense, being thereto lawfully required by any sheriff, deputy sheriff, coroner, constable, judge or justice of the peace, or other officer concerned in the administration of justice, is punishable by fine of not less than fifty nor more than one thousand dollars.

SEC. 166. Every person, who having knowledge of the actual commission of a crime, takes money or property of another, or any gratuity or reward, or any engagement or promise thereof, upon any agreement or understanding to compound or conceal such crime, or to abstain from any prosecution thereof, or to withhold any evidence thereof, except in cases provided for by law in which crimes may be compromised by leave of court, is punishable as follows:

1. By imprisonment in the state prison not exceeding five years, or in a county jail not exceeding one year, where the crime was punishable by death or imprisonment in the state prison for life.

2. By imprisonment in the state prison not exceeding three years, or in the county jail not exceeding six months, where the crime was punishable by imprisonment in the state prison for any other term than for life.

3. By imprisonment in the county jail not exceeding six months, or by fine not exceeding five hundred dollars, where the crime was a misdemeanor.

SEC. 167. Every debtor who fraudulently removes his property or effects out of this state, or fraudulently sells, conveys, assigns or conceals his property, with intent to defraud, hinder or delay his creditors of their rights, claims or demands, is punishable by imprisonment in the county jail not exceeding one year, or by fine not exceeding five thousand dollars, or both.

SEC. 168. Every person against whom an action is pending or against whom a judgment has been rendered for the recovery of any personal property, who fraudulently conceals, sells or disposes of such property, with intent to hinder, delay or defraud the person bringing such action or recovering such judgment, or with such intent removes such property beyond the limits of the county in which it may be at the time of the commencement of such action or the rendering of such judgment, is punishable as provided in the preceding section.

SEC. 169. Every person who fraudulently produces an infant, falsely pretending it to have been born of any parent whose child would be entitled to inherit any real estate or to receive a share of any personal estate, with intent to intercept the inheritance of any such real estate, or the distribution of any such personal estate from any person lawfully entitled thereto, is punishable by imprisonment in the state prison not exceeding ten years.

SEC. 170. Every person to whom an infant has been confided for nursing, education, or any other purpose, who, with intent to deceive any parent or guardian of such child, substitutes or produces to such parent or guardian, another child in the place of the one so confided, is punishable by imprisonment in the state prison not exceeding seven years.

SEC. 171. Common barratry is the practice of exciting groundless judicial proceedings, and is punishable by imprisonment in the county jail not exceeding six months, and by fine not exceeding five hundred dollars.

SEC. 172. No person can be convicted of common barratry except upon proofs that he has excited suits or proceedings at law in at least three instances, and with a corrupt and malicious intent to vex and annoy.

SEC. 173. Every attorney who, whether as attorney or as counselor, either—

1. Is guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party; or,

2. Willfully delays his client's suit with a view to his own gain; or,

3. Willfully receives any money or allowance for or on account of any money which he has not laid out or become answerable for, is guilty of a misdemeanor.

SEC. 174. Every attorney who, either directly or indirectly, buys, or is interested in buying any evidence of debt or thing in action, with intent to bring suit thereon, is guilty of a misdemeanor.

SEC. 175. Every attorney who, directly or indirectly, advises in relation to, or aids, or promotes the defense of any action or proceeding in any court, the prosecution of which is carried on, aided, or promoted by any person as county attorney, or other public prosecutor, with whom such person is directly or indirectly connected as a partner; or who, having himself prosecuted, or in any manner aided or promoted any action or proceeding in any court as county attorney or other public prosecutor, afterwards, directly or indirectly, advises in relation to, or takes any part in the defense thereof, as attorney or otherwise, or who takes or receives any valuable consideration from or on behalf of any defendant in any such action, upon any understanding or agreement whatever having relation to the defense thereof, is guilty of a misdemeanor, and in addition to the punishment prescribed therefor, forfeits his license to practice law.

SEC. 176. The preceding section does not prohibit an attorney from defending himself in person, as attorney or counsel, when prosecuted, either civilly or criminally.

SEC. 177. Every grand juror who, with a knowledge that a challenge interposed against him by a defendant has been allowed, is present at, or takes part, or attempts to take part in the consideration of the charge against the defendant who interposed the challenge, or the deliberations of the grand jury thereon, is guilty of a misdemeanor.

SEC. 178. Every person who gives or offers a bribe to any member of any city or town council, board of county commissioners, or board of trustees of any county, city or corporation, with intent to corruptly influence such member in his action on any matter or subject pending before the body of which he is a member, and every member of either of the bodies mentioned in this section who receives or offers to receive any such bribe, is punishable by imprisonment in the state prison for a term not less than one nor more than fourteen years, and is disqualified from holding any office in this State.

SEC. 179. Every person guilty of any contempt of court of either of the following kinds, is guilty of a misdemeanor:

1. Disorderly, contemptuous, or insolent behavior committed during the sitting of any court of justice, in immediate view and presence of the court, and directly tending to interrupt its proceedings, or to impair the respect due to its authority.

2. Behavior of the like character committed in the presence of any referee, while actually engaged in any trial or hearing, pursuant to the order of any court, or in the presence of any jury while actually sitting for the trial of a cause, or upon any inquest or other proceedings authorized by law.

3. Any breach of the peace, noise, or other disturbance directly tending to interrupt the proceedings of any court.

4. Willful disobedience of any process or order lawfully issued by any court.

5. Resistance willfully offered by any person to the lawful order or process of any court.

6. The contumacious and unlawful refusal of any person to be sworn as a witness; or, when so sworn, the like refusal to answer any material question.

7. The publication of a false or grossly inaccurate report of the proceedings of any court.

8. Presenting to any court having power to pass sentence upon any prisoner under conviction, or to any member of such court, any affidavit or testimony, or representation of any kind, verbal or written, in aggravation or mitigation of the punishment to be imposed upon such prisoner, except as provided in this Code.

SEC. 180. Every public officer or board authorized by law to make or give any certificate or other writing, who makes and delivers as true any such certificate or writing, containing statements which he knows to be false, is guilty of a misdemeanor.

SEC. 181. Every grand juror, county attorney, clerk, judge or other officer, who, except by issuing or in executing a warrant of arrest, willfully discloses the fact of an indictment having been found or information filed for a felony, until the defendant has been arrested, is guilty of a misdemeanor.

SEC. 182. Every grand juror who, except when required by a court, willfully discloses any evidence adduced before the grand jury, or anything which he himself, or any other member of the grand jury may have said, or in what manner he any other member of the grand jury may have voted on a matter before them, is guilty of a misdemeanor.

SEC. 183. Every person who, maliciously and without probable cause, procures a search warrant or warrant of arrest to be issued and executed, is guilty of a misdemeanor.

SEC. 184. Every person, not authorized by law, who, without the consent of the warden, or other officer in charge of the state prison, communicates with any convict therein, or brings into or conveys out of the state prison any letter or writing to or from any convict, is guilty of a misdemeanor.

SEC. 185. Every willful omission to perform any duty enjoined by law upon any public officer, or person holding any public trust or employment or any neglect of duty, where no special provision has been made for the punishment of such delinquency, is punishable as a misdemeanor.

SEC. 186. When an act or omission is declared by a statute to be a public offense, and no penalty for the offense is prescribed in any statute, the act or omission is punishable as a misdemeanor.

SEC. 187. Every officer who, under color of authority, oppresses, wrongs or injures any person, is guilty of a misdemeanor.

CHAPTER VIII.

CONSPIRACY.

Section 195. Criminal conspiracy defined and punishment fixed.
" *196. Trusts, punishment.*
" *197. No other conspiracies punishable criminally.*
" *198. Overt act, when necessary.*
" *199. Wearing mask or disguise.*
" *200. Limitation.*

SEC. 195. If two or more persons conspire

1. To commit any crime.

2. Falsely and maliciously to indict another for any crime, or to procure another to be charged or arrested for any crime.

3. Falsely to move or maintain any suit, action or proceeding.

4. To cheat and defraud any person of any property by any means which are in themselves criminal, or to obtain money or property by false pretenses, or

5. To commit any act injurious to the public health, to public morals, or for the perversion or obstruction of justice, or due administration of the laws.

They are punishable by imprisonment in the county jail not exceeding one year, or by fine not exceeding one thousand dollars, or both.

SEC. 196. Every person, corporation, stock company or association of persons in this State who, directly or indirectly, combine or form what is known as a trust, or make any contract with any person or persons, corporations or stock companies, foreign or domestic, through their stockholders, directors, officers, or in any manner whatever, for the purpose of fixing the price or regulating the production of any article of commerce, or of the product of the soil for consumption by the people, or to create or carry out any restriction in trade, to limit productions, or increase or reduce the price of merchandise or commodities, or to prevent competition in merchandise or commodities, or to fix a standard or figure whereby the price of any article of merchandise, commerce or produce, intended for sale, use or consumption, will be in any way controlled, or to create a monopoly in the manufacture, sale or transportation of any such article, or to enter into an obligation by which they shall bind others or themselves not to manufacture, sell, or transport any such article below a common standard or figure, or by which they agree to keep such article or transportation at a fixed or graduated figure, or by which they settle the price of such article, so as to preclude unrestricted competition, is punishable by imprisonment in the state prison not exceeding five years, or by fine not exceeding ten thousand dollars, or both. Every corporation violating the provisions of this section, forfeits to the State all its property and franchises, and in case of a foreign corporation it is prohibited from carrying on business in the State.

SEC. 197. No conspiracies other than those enumerated in the preceding sections are punishable criminally.

SEC. 198. No agreement, except to commit a felony upon the person of another, or to commit arson or burglary, amounts to a conspiracy, unless some act, beside such agreement, be done to effect the object thereof, by one or more of the parties to the agreement.

SEC. 199. It is unlawful for any person to wear any mask, false whiskers, or any personal disguise (whether complete or partial) for the purpose of

1. Evading or escaping discovery, recognition or identification in the commission of any public offense.

2. Concealment, flight or escape when charged with, arrested for, or convicted of any public offense. Any person violating any of the provisions of this section is guilty of a misdemeanor.

SEC. 200. The provisions of this chapter do not apply to any arrangement, agreement or combination between laborers made with the object of lessening the number of hours of abor, or increasing wages, nor to persons engaged in horticulture or agriculture, with a view of enhancing the price of their products.

TITLE VIII.

CRIMES AGAINST THE PERSON.

Chapter I. Homicide.
" *II. Mayhem.*
" *III. Kidnapping.*
" *IV. Robbery.*
" *V. Assaults.*
" *VI. Duels and challenges.*
" *VII. False imprisonment.*
" *VIII. Libel.*

CHAPTER I.

HOMICIDE.

Section 205. Murder defined.
" *206. Malice defined.*
" *207. Degrees of murder.*
" *208. Punishment of murder.*
" *209. Petit treason abolished.*
" *210. Manslaughter—voluntary and involuntary.*
" *211. Punishment of manslaughter.*
" *212. Deceased must die within a year and a day.*
" *213. Proof of corpus delicti.*
" *214. Excusable homicide.*
" *215. Justifiable homicide by officers.*
" *216. Justifiable homicide by other persons.*
" *217. Bare fear not to justify killing.*
" *218. Justifiable and excusable homicide not punishable.*

SEC. 205. Murder is the unlawful killing of a human being, with malice aforethought.

SEC. 206. Such malice may be express or implied. It is express when there is manifested a deliberate intention unlawfully to take away the life of a fellow creature. It is implied when no considerable provocation appears, or when the circumstances attending the killing show an abandoned and malignant heart.

SEC. 207. All murder which is perpetrated by means of poison, or lying in wait, torture, or by any other kind of willful, deliberate, and premeditated killing, or which is committed in the perpetration or attempt to perpetrate arson, rape, robbery, burglary, or mayhem, is murder of the first degree; and all other kinds of murders are of the second degree.

SEC. 208. Every person guilty of murder in the first degree, shall suffer death; and every person guilty of murder in the second degree, is punishable by imprisonment in the state prison not less than ten years.

SEC. 209. The rules of the common law, distinguishing the killing of a master by his servant, and of a husband by his wife, as petit treason, are abolished, and these offenses are homicides, punishable in the manner prescribed by this chapter.

SEC. 210. Manslaughter is the unlawful killing of a human being without malice. It is of two kinds:

1. Voluntary, upon a sudden quarrel or heat of passion.

2. Involuntary, in the commission of an unlawful act, not amounting to felony; or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution or circumspection.

SEC. 211. Manslaughter is punishable by imprisonment in the state prison not exceeding ten years.

SEC. 212. To make the killing either murder or manslaughter, it is requisite that the party die within a year and a day after the stroke received or the cause of death administered; in the computation of which the whole of the day on which the act was done shall be reckoned the first.

SEC 213. No person can be convicted of murder or manslaughter unless the death of the person, alleged to have been killed, and the fact of the killing by the defendant as alleged, are established as independent facts; the former by direct proof and the latter beyond a reasonable doubt.

SEC. 214. Homicide is excusable in the following cases:

1. When committed by accident or misfortune, in lawfully correcting a child or servant, or in doing any other lawful act by lawful means, with usual and ordinary caution, and without any unlawful intent.

2. When committed by accident or misfortune, in the heat of passion, upon any sudden or sufficient provocation, or upon a sudden combat, when no undue advantage is taken, nor any dangerous weapon used, and when the killing is not done in any cruel or unusual manner.

SEC. 215. Homicide is justifiable when committed by public officers, and those acting by their command in their aid and assistance, either.

1. In obedience to a judgment of a competent court; or

2. When necessarily committed in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty; or,

3. When necessarily committed in retaking felons who have been rescued or have escaped, or when necessarily committed in arresting persons charged with felony, and who are fleeing from justice or resisting such arrest.

SEC. 216. Homicide is also justifiable when committed by any person in either of the following cases:

1. When resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person; or,

2. When committed in defense of habitation, property or person, against one who manifestly intends and endeavors, in a violent, riotous or tumultuous manner to enter the habitation of another for the purpose of offering violence to any person therein; or,

3. When committed in the lawful defense of such person, or of a wife, or husband, parent, child, master, mistress or servant of such person, when there is reasonable ground to apprehend a design to commit a felony, or to do some great bodily injury, and imminent danger of such design being accomplished; but such person, or the person in whose behalf the defense was made, if he was the assailant or engaged in mortal combat, must really and in good faith have endeavored to decline any further struggle before the homicide was committed; or

4. When necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed, or in lawfully suppressing any riot, or in lawfully keeping and preserving the peace.

SEC. 217. A bare fear of the commission of any of the offenses mentioned in subdivisions two and three of the preceding section, to prevent which homicide may be lawfully committed, is not sufficient to justify it. But the circumstances must be sufficient to excite the fears of a reasonable person, and the party killing must have acted under the influence of such fears alone.

SEC. 218. The homicide appearing to be justifiable or excusable, the person indicted must upon his trial, be fully acquitted and discharged.

CHAPTER II.

MAYHEM.

Section 225. Mayhem defined.
" 226. Mayhem, how punishable.

SEC. 225. Every person who unlawfully and maliciously deprives a human being of a member of his body, or disables, disfigures or renders it useless, or cuts or disables the tongue, or puts out an eye, or slits the nose, ear or lip, is guilty of mayhem.

SEC. 226. Mayhem is punishable by imprisonment in the state prison not exceeding fourteen years.

CHAPTER III.

KIDNAPPING.

Section 228. Kidnapping defined and punishment.
" 229. Venue.
" 230. Consent of injured person.

SEC. 228. Every person who willfully;

1. Seizes, confines, inveigles, or kidnaps another with intent to cause him, without authority of law, to be secretly confined or imprisoned within this State, or to be sent out of the State, or in any way held to service or kept, or detained against his will; or,

2. Leads, takes, entices away, or detains a child under the age of sixteen years with intent to keep or conceal it from its parent, guardian, or other person having the lawful care or control thereof, or to extort or obtain money or reward for the return or disposition of the child, or with intent to steal any article about or on the person of the child; or,

3. Abducts, entices, or by force or fraud unlawfully takes or carries away another, at or from a place without the State or procures or advises, aids or abets such an abduction, enticing, taking, or conveying away, and afterwards sends, brings, has or keeps such person, or causes him to be kept or secreted within this State, is guilty of kidnapping, and is punishable by imprisonment in the state prison not less than one nor more than ten years.

SEC. 229. An indictment or information for kidnapping may be tried either in the county in which the offense was committed or in any county through or in which the person kidnapped or confined, was taken or kept while under confinement or restraint.

SEC. 230. Upon a trial for a violation of the offense mentioned in this chapter, the consent thereto of the person kidnapped or confined is not a defense, unless it appear that such person was above the age of twelve years, and that the consent was not extorted by threats or duress.

CHAPTER IV.

ROBBERY.

Section 233. Robbery defined.
" 234. What fear may be an element in robbery.
" 235. Punishment of robbery.

SEC. 233. Robbery is the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear.

SEC. 234. The fear mentioned in the last section may be either:

1. The fear of an unlawful injury to the person or property of the person robbed, or of any relative of his, or member of his family; or,

2. The fear of an immediate and unlawful injury to the person or property of any one in the company of the person robbed at the time of the robbery.

SEC. 235. Robbery is punishable by imprisonment in the state prison not less than one year.

CHAPTER V.

ASSAULTS.

Section 238. Assault in first degree, defined and how punished.
" 239. Assault in second degree.
" 240. Assault in third degree.
" 241. Assaults with caustic chemicals, etc.
" 242. Use of force not unlawful.

SEC. 238. Every person who, with intent to kill a human being, or to commit a felony upon the person or property of the one assaulted or of another:

1. Assaults another with a loaded firearm or any other deadly weapon, or by any other means or force likely to produce death; or

2. Administers or causes to be administered to, or taken by another, poison or any other destructive or noxious thing, so as to endanger the life of such other,

Is guilty of assault in the first degree, and is punishable by imprisonment in the state prison not less than five nor more than ten years.

SEC. 239. Every person who, under circumstances not amounting to the offense specified in the last section:

1. With intent to injure unlawfully, administers to, or causes to be administered to, or taken by another, poison or any other destructive or noxious thing, or any drug or medicine, the use of which is dangerous to life or health; or,

2. With intent thereby to enable or assist himself or any other person to commit any crime, administers to, or causes to be administered to, or taken, by another, chloroform, ether, laudanum, or any other intoxicating, narcotic or anesthetic agent; or,

3. Willfully or wrongfully wounds or inflicts grievous bodily harm upon another, either with or without a weapon; or,

4. Willfully and wrongfully assaults another by the use of a weapon or other instrument or thing likely to produce grievous bodily harm; or,

5. Assaults another with intent to commit a felony or to prevent or resist the execution of any lawful process or mandate of any court or officer, or the lawful apprehension or detention of himself or of any other person,

Is guilty of an assault in the second degree, and is punishable by imprisonment in the state prison for not less than one nor more than five years, or by a fine not exceeding two thousand dollars, or both.

SEC. 240. Every person who commits an assault or an assault and battery not such as is specified in the foregoing sections of this chapter, is guilty of assault in the third degree, and is punishable by imprisonment in the county jail not more than six months, or by a fine not more than five hundred dollars, or both.

SEC. 241. Every person who willfully and maliciously places or throws, or causes to be placed or thrown upon the person of another, any vitriol, corrosive acid, or caustic chemical of any nature, with the intent to injure the flesh or disfigure the body of such person, is punishable by imprisonment in the state prison not less than one nor more than fourteen years.

SEC. 242. To use or attempt or offer to use force or violence upon or towards the person of another is not unlawful in the following cases:

1. When necessarily committed by a public officer in the performance of a legal duty, or by any other person assisting him or acting under his direction;

2. When necessarily committed by any person in arresting one who has committed a felony and delivering him to a public officer competent to receive him in custody;

3. When committed either by the party about to be injured, or by another person in his aid or defense, in preventing or attempting to prevent an offense against his person, or a trespass or other unlawful interference with real or personal property in his possession, if the force or violence used is not more than sufficient to prevent such offense;

4. When committed by a parent, or an authorized agent of any parent, or by a guardian, master or teacher, in the exercise of a lawful authority to restrain or correct his child, ward, apprentice or pupil and the force or violence used is reasonable in manner and moderate in degree;

5. When committed by a carrier of passengers or the authorized agent or servants of such carrier, or by any person assisting them at their request in expelling from a carriage, coach, railway car, vessel or other vehicle, a passenger who refuses to obey a lawful and reasonable regulation prescribed for the conduct of passengers, if such vehicle has first been stopped at any usual stopping place or near any dwelling house, and the force or violence used is not more than sufficient to expel the offending passenger with a reasonable regard to his personal safety;

6. When committed by any person when preventing an idiot, lunatic, insane person, or other person of unsound mind, including persons temporarily or partially deprived of their reason, from committing an act dangerous to himself or to an-

other, or in enforcing such restraint as is necessary for the protection of his person or for his restoration to health during such period only as shall be necessary to obtain legal authority for the restraint and custody of his person.

CHAPTER VI.

DUELS AND CHALLENGES.

Section 246. Duel defined.
" *247. Punishment for fighting a duel when death ensues.*
" *248. Punishment for fighting a duel although death does not ensue.*
" *249. Posting for not fighting.*
" *250. Duties of officers to prevent duels.*
" *251. Leaving the State with intent to evade laws against dueling.*
" *252. Witness' privilege.*

SEC. 246. A duel is any combat with deadly weapons, fought between two or more persons, by previous agreement or upon a previous quarrel.

SEC. 247. Every person guilty of fighting any duel from which death ensues within a year and a day, is punishable by imprisonment in the state prison not less than one nor more than seven years.

SEC. 248. Every person who fights a duel or accepts or sends a challenge to fight a duel, is punishable by imprisonment in the state prison or in a county jail not exceeding one year.

SEC. 249. Every person who posts or publishes another for not fighting a duel, or for not sending or accepting a challenge to fight a duel, or who uses any reproachful or contemptuous language, verbal, written or printed, to or concerning another for not sending or accepting a challenge to fight a duel, or with intent to provoke a duel, is guilty of a misdemeanor.

SEC. 250. Every judge, justice of the peace, sheriff or other officer bound to preserve the public peace, who has knowledge of the intention on the part of any persons to fight a duel, and who does not exert his official authority to arrest the party and prevent the duel, is punishable by fine not exceeding one thousand dollars.

SEC. 251. Every person who leaves this State with intent to evade any of the provisions of this chapter, and to commit any act out of this State, such as is prohibited by this chapter, and who does any act, although out of this State, which would be punishable by such provisions if committed within this State, is punishable in the same manner as he would have been in case such act had been committed within this State.

SEC. 252. No person shall be excused from testifying or answering any question upon any investigation or trial for a violation of either of the provisions of this chapter, upon the ground that his testimony might tend to convict him of a crime. But no evidence given upon any examination of a person so testifying shall be received against him in any criminal prosecution or proceeding.

CHAPTER VII.

FALSE IMPRISONMENT.

Section 254. False imprisonment defined and how punished.

Sec. 254. False imprisonment is the unlawful violation of the personal liberty of another, and is punishable by fine not exceeding five thousand dollars, or by imprisonment in the county jail not more than one year, or both.

CHAPTER VIII.

LIBEL.

Section 257. Libel defined.
" *258. Punishment of libel.*
" *259. Malice presumed.*
" *260. Truth may be given in evidence. Jury to determine and fact.*
" *261. Publication defined.*
" *262. Liability of editors and publishers.*
" *263. Publishing a true report of public proceedings. privileged.*
" *264. Extent of privilege.*
" *265. Other privileged communications.*
" *266. Threatening to publish libel. Offer to prevent publication, with intent to extort money.*

Sec. 257. A libel is a malicious defamation, expressed either by writing, printing, or by signs or pictures, or the like, tending to blacken the memory of one who is dead, or to impeach the honesty, integrity, virtue or reputation, or to publish the natural or alleged defects of one who is alive, and thereby to expose him to public hatred, contempt or ridicule.

Sec. 258. Every person who willfully and with a malicious intent to injure another, publishes or procures to be published, any libel is punishable by fine not exceeding five thousand dollars, or imprisonment in the county jail not exceeding one year.

Sec. 259. An injurious publication is presumed to have been malicious if no justifiable motive for making it is shown.

Sec. 260. In all criminal prosecutions for libel the truth may be given in evidence to the jury, and if it appears to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted. The jury have the right to determine the law and the fact.

SEC. 261. To sustain a charge of publishing a libel, it is not needful that the words or things complained of should have been read or seen by another. It is enough that the accused knowingly parted with the immediate custody of the libel, under circumstances which exposed it to be read or seen by any other person than himself.

SEC. 262. Each author, editor or proprietor of any book, newspaper or serial publication, is chargable with the publication of any words contained in any part of such book, or number of such newspaper or serial.

SEC. 263. No reporter, editor or proprietor of any newspaper is liable to any prosecution for a fair and true report of any judicial, legislative or other public official proceedings, or of any statement, speech, argument or debate in the course of the same, except upon proof of malice in making such report, which is not implied from the mere fact of publication.

SEC. 264. Libelous remarks or comments connected with matter privileged by the last section receive no privilege by reason of their being so connected.

SEC. 265. A communication made to a person interested in the communication, by any one who was also interested, or who stood in such relation to the former as to afford a reasonable ground for supposing his motive innocent, is not presumed to be malicious, and is a privileged communication.

SEC. 266. Every person who threatens another to publish a libel concerning him, or any parent, husband, wife, or child of such person or member of his family, and every person who offers to prevent the publication of any libel upon another person, with intent to extort money or other valuable consideration from any person, is guilty of a misdemeanor.

TITLE IX.

CRIMES AGAINST THE PERSON AND AGAINST PUBLIC DECENCY AND GOOD MORALS.

Chapter I. Rape, abduction, carnal abuse of children, and seduction.
“ *II. Abandonment and neglect of children.*
“ *III. Abortion.*
“ *IV. Bigamy, incest and crime against nature.*
“ *V. Violating sepulture and the remains of the dead.*
“ *VI. Crimes against religion and conscience, and other offenses against good morals.*
“ *VII. Indecent exposure, obscene exhibitions, books and prints, and bawdy and other disorderly houses.*
“ *VIII. Lotteries.*
“ *IX. Gaming.*
“ *X. Pawnbrokers.*
“ *XI. Other injuries to persons.*

CHAPTER I.

RAPE, ABDUCTION, CARNAL ABUSE OF CHILDREN, SEDUCTION AND ADULTERY.

Section 275. Rape defined.
“ *276. When physical ability must be prove*
“ *277. Penetration sufficient.*
“ *278. Punishment of rape.*
“ *279. Abduction of women.*
“ *280. Seduction for purposes of prostitution.*
“ *281. Abduction.*
“ *282. Adultery.*
“ *283. Seduction.*

SEC. 275. Rape is an act of sectual intercourse accomplished with a female, not the wife of the perpetrator, under either of the following circumstances:

1. Where the female is under the age of fifteen years:

2. Where she is incapable, through lunacy or any other unsoundness of mind, whether temporary or permanent, of giving legal consent.

3. Where she resists, but her resistance is overcome by force or violence.

4. Where she is prevented from resisting by threats of immediate and great bodily harm, accompanied by apparent power of execution, or by any intoxicating, narcotic or any anesthetic substance, administered by or with the privity of the accused.

5. Where she is, at the time, unconscious of the nature of the act, and this is known to the accused.

6. Where she submits, under a belief that the person committing the act is her husband, and this belief is induced by any artifice, pretense or concealment practised by the accused, with intent to produce such belief.

SEC. 276. No conviction for rape can be had against one who was under the age of sixteen years at the time of the act alleged, unless his physical ability to accomplish penetration is proved as an independent fact and beyond a reasonable doubt.

SEC. 277. The essential guilt of rape consists in the outrage to the person and feelings of the female. Any sectual penetration, however slight, is sufficient to complete the crime.

SEC. 278. Rape is punishable by imprisonment in the state prison not less than five years.

SEC. 279. Every person who takes any woman unlawfully against her will, and by force, menace or duress compels her to marry him, or to marry any other person, or to be defiled, is punishable by imprisonment in the state prison not less than two nor more than fourteen years.

SEC. 280. Every person who inveigles or entices any unmarried female, of previous chaste character, under the age of [illegible] man, and every person who aids or assists in such inveiglement or enticement, and every person who, by any false pretenses, false representation or other fraudulent means, procures any female to have any illicit carnal connection with any man, is punishable by imprisonment in the state prison not exceeding five years, or by imprisonment in the county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or both.

Sec. 281. Every person who takes away any female under the age of eighteen years from her father, mother, guardian or other person having the legal charge of her person, without their consent, for the purpose of prostitution, is punishable by imprisonment in the state prison not exceeding five years, and a fine not exceeding one thousand dollars.

Sec. 282. Every person who lives in open and notorious cohabitation in a state of adultery or fornication, is punishable by a fine not exceeding five hundred dollars or by imprisonment in the county jail not exceeding six months or both. The intermarriage of the parties subsequent to the commission of the offense is a bar to the prosecution.

Sec. 283. Every person who, under promise of marriage, seduces and has sexual intercourse with an unmarried female of previous chaste character is punishable by imprisonment in the state prison nor more than five years or by a fine not more than five thousand dollars, or both. The intermarriage of the parties subsequent to the commission of the offense is a bar to the prosecution.

CHAPTER II.

ABANDONMENT AND NEGLECT OF CHILDREN.

Section 286. Omitting to provide child with necessaries.
" *287. Deserting child.*
" *288. Disposing of child for mendicant business.*
" *289. Cruel punishment, etc.*
" *290. Employment of a child in a mine.*
" *291. Compulsory education, violation of law for.*

Sec. 286. Every parent of a child who willfully omits, without lawful excuse to perform any duty imposed upon him by law, to furnish necessary food, clothing, shelter or medical attendance for such child, is guilty of a misdemeanor.

Sec. 287. Every parent of any child under the age of six years, and every person to whom any such child has been confided for nurture or education, who deserts such child in any place whatever, with intent wholly to abandon it, is punishable by imprisonment in the state prison not exceeding seven years, or in a county jail not exceeding one year.

[illegible] for the vocation, use, occupation, calling, service or purpose of singing, playing on musical instruments, rope walking, dancing, begging or peddling in any public street or highway, or in any mendicant or wandering business whatever, and any person who shall take, receive, hire, employ, use or have in custody any child for such purposes, or either of them, is guilty of a misdemeanor.

Sec. 289. Every person who has the legal care or custody of an infant, minor child or apprentice, and cruelly treats, abuses or inflicts unnecessary and cruel punishment upon the same, or willfully abandons or neglects such child, is punishable by a fine not exceeding one hundred dollars.

Sec. 290. Every person who receives or employs any child under fourteen years of age in any underground works or mine, or in any similar business, is punishable by a fine not exceeding one thousand dollars.

Sec. 291. Every person who fails to comply with the provisions of section 1154 of the Political Code, relating to compulsory education, is guilty of a misdemeanor and upon conviction is punishable by a fine not less than ten nor more than fifty dollars. All fines so collected must be paid into the school fund of the county.

CHAPTER III.

ABORTIONS.

Section 295. Administering drugs, etc., with intent to produce miscarriage.

" *296. Submitting to an attempt to produce miscarriage.*

Sec. 295. Every person who provides, supplies or administers to any pregnant woman, or procures any such woman to take any medicine, drug or substance, or uses or employs any instrument or other means whatever, with intent thereby to procure the miscarriage of such women, unless the same is necessary to preserve her life, is punishable by imprisonment in the state prison not less than two nor more than five years.

Sec. 296. Every woman who solicits of any person any medicine, drug or substance whatever, and takes the same, or who submits to any operation, or to the use of any means whatever, with intent thereby to procure a miscarriage, unless the same is necessary to preserve her life, is punishable by imprisonment in the state prison not less than one nor more than five years.

CHAPTER IV.

BIGAMY, INCEST AND THE CRIME AGAINST NATURE.

Section 300. Bigamy defined.
" *301. Exceptions.*
" *302. Punishment of bigamy.*
" *303. Marrying a husband or wife of another.*
" *304. Incest.*
" *305. Unlawful marriage.*
" *306. Crime against nature.*
" *307. Penetration sufficient to complete the crime.*

SEC. 300. Every person having a husband or wife living, who marries any other person except in the cases specified in the next section, is guilty of bigamy.

SEC. 301. The last section does not extend—

1. To any person by reason of any former marriage, whose husband or wife by such marriage has been absent for five successive years, without being known to such person within that time to be living; nor,

2. To any person by reason of any former marriage which has been pronounced void, annulled or dissolved by the judgment of a competent court.

SEC. 302. Bigamy is punishable by fine not exceeding two thousand dollars, and by imprisonment in the State Prison not exceeding three years.

SEC. 303. Every person who knowingly and willfully marries the husband or wife of another, in any case in which such husband or wife would be punishable under the provisions of this chapter, is punishable by fine not less than two thousand dollars, or by imprisonment in the state prison not exceeding three years.

SEC. 304. Persons within the degrees of consanguinity within which marriages are declared by law to be incestuous and void, who intermarry with each other, or who commit fornication or adultery with each other, are punishable by imprisonment in the state prison not exceeding ten years.

SEC. 305. Every person who marries another contrary to the provisions of section 91 of the Civil Code, is punishable by imprisonment in the state prison not exceeding one year.

SEC. 306. Every person who is guilty of the infamous crime against nature, committed with mankind or with any animal, is punishable by imprisonment in the state prison not less than five years.

SEC. 307. Any sexual penetration, however slight, is sufficient to complete the crime against nature.

CHAPTER V.

VIOLATING SUPULTURE AND THE REMAINS OF THE DEAD.

Section 310. Unlawful mutilation or removal of dead bodies.
" *311. Unlawful removal of dead body from grave for dissection, etc.*
" *312. Who are charged with the duty of burial.*
" *313. Punishment for omitting to bury.*
" *314. Who are entitled to custody of a body.*
" *315. Arresting or detaching a dead body.*
" *316. Defacing tombs or monuments.*
" *317. Unlawful interments.*

SEC. 310. Every person who mutilates, disinters, or removes from the place of sepulture the dead body of a human being without authority of law is guilty of felony. But the provisions of this section do not apply to any person who removes the dead body of a relative or friend for reinterment.

SEC. 311. Every person who removes any part of the dead body of a human being from any grave or other place where the same has been buried, or from any place where the same has been deposited while awaiting burial, with intent to sell the same, or dissect, without authority of law, or from malice or wantonness, is punishable by imprisonment in the state prison not exceeding five years.

SEC. 312. The duty of burying the body of a deceased person devolves upon the persons hereinafter specified:

1. If the deceased was a married woman the duty devolves upon her husband.

2. If the deceased was not a married woman, but left any kindred, the duty of burial devolves upon the person or persons in the same degree nearest of kin to the deceased, being of adult age and within this State, if possessed of sufficient means to defray the necessary expenses.

3. If the deceased left no husband or kindred answering the foregoing description the duty of burial devolves upon the coroner conducting an inquest upon the body of the deceased, if any such inquest is held; if there is none, then upon the persons charged with the support of the poor in the locality in which the death occurs.

4. In case the person upon whom the duty of burial is cast by the foregoing provisions omits to make such burial within a reasonable time the duty devolves upon the person next specified, and if all omit to act it devolves upon the tenant, or if there is no tenant, then the owner of the premises or master, or if there is no master, upon the owner of the vessel in which the death occurs or the body is found.

SEC. 313. Every person upon whom the duty of making burial of the remains of a deceased person is imposed by law who omits to perform that duty within a reasonable time is guilty of a misdemeanor, and, in addition to the punishment prescribed therefor, is liable to pay to the person performing the duty in his stead treble the expenses incurred by the latter in making the burial, to be recovered in a civil action.

SEC. 314. The person charged by law with the duty of burying the body of a deceased person is entitled to the custody of such body for the purpose of burying it, except that in the case in which an inquest is required by law to be held upon a dead body by a coroner such coroner is entitled to its custody until such inquest has been completed.

SEC. 315. Every person who arrests or attaches any dead body of a human being upon any debt or demand whatever or detains or claims to detain it for any debt or demand or upon any pretended lien or charge is guilty of a misdemeanor.

SEC. 316. Every person who willfully and maliciously defaces, breaks, destroys or removes any tomb, monument or gravestone erected to any deceased person, or any memento or memorial, or any ornamental plant, tree or shrub appertaining to the place of burial of a human being, or who shall mark, deface, injure, destroy or remove any fence, post, rail or wall, of any cemetery or graveyard, is guilty of a misdemeanor.

SEC. 317. Every person who buries or inters, or causes to be buried or interred, the dead body of any human being or any human remains in any place within the corporate limits of any city or town in this State, except in a cemetery or place of burial now existing under the laws of this State and in which interments have been made, or that is now or may hereafter be established or organized by the board of county commissioners of the county in which such city or town is situate is guilty of a misdemeanor.

CHAPTER VI.

OFFENSES AGAINST GOOD MORALS.

Section 322. Keeping open places of amusement and gambling houses on Sunday.
" *323. Disturbing religious meeting on Sunday.*
" *324. Sale of liquors and employing women to sell liquor thereat.*
" *325. Selling liquors at camp-meeting.*
" *326. Limitation of preceding section.*
" *327. Females exhibited in public places.*
" *328. Keeping or resorting to place where opium is used.*
" *329. Admission of minor to place of prostitution.*
" *330. Permitting minors to resort in a saloon.*
" *331. Furnishing liquors to habitual drunkards, minors or Indians.*

SEC. 322. Every person who on Sunday, or the first day of the week, keeps open or maintains or aids in opening or maintaining any theater, play-house, dance-house, race-track, gambling-house, concert saloon or variety hall is guilty of a misdemeanor.

SEC. 323. Every person who willfully disturbs or disquiets any assemblage of people met for religious worship by noise, profane discourse, rude or indecent behavior, or by any unnecessary noise, either within the place where such meeting is held or so near it as to disturb the order and solemnity of the meeting, is guilty of a misdemeanor.

SEC. 324. Every person who sells or furnishes any malt, vinous or spirituous liquor to any person in the auditorium, boxes or lobbies of any theater, melodeon, variety show, museum, circus or caravan, or any place where any farce, comedy, tragedy, ballet, opera or play is being performed, or any exhibition of dancing, juggling, wax-work figures and the like is being given for public amusement, and every person who employs or procures or causes to be employed or procured any female to sell or furnish any malt, vinous or spirituous liquors at such place is guilty of a misdemeanor.

SEC. 325. Every person who erects or keeps a booth, tent, stall or other contrivance for the purpose of selling or otherwise disposing of any wine, spirituous or intoxicating liquors, or any drink of which wines, spirituous or intoxicating liquors form a part, or for selling or otherwise disposing of any article of merchandise, or who peddles or hawks about any such drink or article within one mile of any camp or field meeting for religious worship during the time of holding such meeting is punishable by a fine of not less than five nor more than five hundred dollars.

SEC. 326. The provisions of the preceding section do not apply to a person carrying on a regular business in the sale of liquors or other articles which business was established prior to the appointment of the meeting referred to in the last section.

SEC. 327. Every person who causes, procures or employs any female for hire, drink or gain to play upon any musical instrument or to dance, promenade or otherwise exhibit herself in any drinking saloon, dance-cellar, ball-room, public garden, public highway, common park or street, or in any steamboat or railroad car, or in any place whatsoever, if in such place there is connected therewith the sale or use as a beverage of any intoxicating, spirituous, vinous or malt liquors, or who shall allow the same in any premises under his control where intoxicating, spirituous, vinous or malt liquors are sold or used, when two or more persons are present, is punishable by a fine of not less than fifty nor more than five hundred dollars or by imprisonment in the county jail not exceeding three months or both; and every female so playing upon any musical instrument or dancing, promenading or exhibiting herself, as herein aforesaid, is punishable by a fine not exceeding one hundred dollars or by imprisonment in the county jail not exceeding one month, or both.

SEC. 328. Every person who opens or maintains, to be resorted to by other persons, any place where opium, or any of its preparations is sold, or given away, to be smoked at such place and any person who at such place sells or gives away any opium, or its said preparations, to be there smoked or otherwise used, and every person who visits or resorts to any such place for the purpose of smoking opium, or its said preparations, is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars, or imprisonment in the county jail not exceeding six months, or both.

SEC. 329. Any proprietor, keeper, manager, conductor or person having the control of any house of prostitution or any house or room-resorted to for the purpose of prostitution, who shall admit or keep any minor of either sex therein, or any parent or guardian of any such minor who shall admit or keep such minor, or sanction or conive at the admission or keeping thereof into or in any such house or room shall be guilty of a misdemeanor.

SEC. 330. Every person who keeps a saloon, gambling-house or other place of resort where intoxicating liquors are sold by retail, or games of chance are played, and permits any minor to resort or stop therein, is guilty of a misdemeanor.

SEC. 331. Every person who sells or gives intoxicating liquors to persons who are in the habit of getting drunk or intoxicated, or of drinking intoxicating liquors to excess, after being notified of such habit or knowing the same, or who sells or gives intoxicating liquors to a minor without the consent of his parent or guardian, or to an Indian, is liable in damages to any person who is injured thereby in money, property, or means of support, and in addition thereto is guilty of a misdemeanor. In a suit for recovering damages named in this section a married woman may sue in her own name and a minor by a guardian.

CHAPTER VII.

INDECENT EXPOSURE, OBSCENE EXHIBITIONS, BOOKS AND PRINTS AND BAWDY AND OTHER DISORDERLY HOUSES.

Section 333. Obscene literature not to be given to or sold by minors.
" 334. Penalty.
" 335. Indecent exposures, exhibitions and pictures.
" 336. Seizure of indecent articles authorized.
" 337. Their character to be summarily determined.
" 338. Their destruction.
" 339. Keeping or residing in a house of ill-fame.

Section 340. Keeping disorderly houses.
" *341. Advertising to producing miscarriage.*
" *342. Enticing to place of gambling or prostitution.*

SEC. 333. It is unlawful for any person to sell, lend, give away or show or have in his possession with intent to sell or give away or to show or advertise or otherwise offer for loan, gift or distribution, to any minor child, under the age of sixteen, years any book, pamphlet, magazine, newspaper, lewd picture, story paper or other printed paper, devoted to the publication or principally made up of criminal news, police reports or accounts of criminal deeds, or pictures and stories of lust or crime.

It is unlawful to exhibit upon any street or highway, or in any place within the view of any minor child under the age of sixteen years, or to hire, use, employ, or permit such child to sell or give away or in any manner distribute any such book, pamphlet, magazine, lewd picture, newspaper, story paper or publication.

SEC. 334. Every person violating any of the provisions of the next preceding section is guilty of a misdemeanor.

SEC. 335. Every person who willfully and lewdly either—

1. Exposes his person or the private parts thereof, in any public place or in any place where there are other persons present to be offended or annoyed thereby; or,

2. Procures, counsels or assists any person to expose himself, or to take part in any model artist exhibition, or to make any other exhibition of himself to public view, or to the view of any number of persons such as is offensive to decency, or is adapted to excite to vicious or lewd thoughts or acts; or,

3. Writes, composes, stereotypes, prints, publishes, sells, distributes, keeps for sale or exhibits any obscene or indecent writing, paper or book, or designs, copies, draws, engraves, paints or otherwise prepares any obscene or indecent picture or print, or molds, cuts, casts or otherwise makes any obscene or indecent figure; or,

4. Writes, composes or publishes any notice or advertisement of any such writing, paper, book, picture, print or figure; or,

5. Sings any lewd or obscene song, ballad or other words in any public place or in any place where there are persons present to be annoyed thereby, is guilty of a misdemeanor.

SEC. 336. Every person who is authorized or enjoined to arrest any person for a violation of subdivision three of the last section, is equally authorized and enjoined to seize any obscene or indecent writing, paper, book, picture, print or figure found in possession, or under the control of the person so arrested, and to deliver the same to the magistrate before whom the person so arrested, is required to be taken.

SEC. 337. The magistrate to whom any obscene or indecent writing, paper, book, picture, print or figure is delivered pursuant to the foregoing section, must upon the examination of the accused, or, if the examination is delayed or prevented, without awaiting such examination, determine the character of such writing, paper, book, picture, print or figure, and if he finds it to be obscene or indecent, he must deliver one copy to the county attorney of the county in which the accused is liable to trial, and must at once destroy all the other copies.

SEC. 338. Upon the conviction of the accused, such county attorney must cause any writing, paper, book, picture, print or figure, in respect whereof the accused stands convicted and which remains in the possession or under the control of such county attorney to be destroyed.

SEC. 339. Every person who keeps a house of ill-fame in this State, resorted to for the purposes of prostitution or lewdness, or who willfully resides in such house is guilty of a misdemanor.

SEC. 340. Every person who keeps any disorderly house, or any house for the purpose of assignation or prostitution, or any house of public resort, by which the peace, comfort or decency of the immediate neighborhood is habitually disturbed, or who keeps any inn in a disorderly manner, and every person who lets any apartment or tenement, knowing that it is to be used for the purpose of assignation or prostitution, is guilty of a misdemeanor.

SEC. 341. Every person who willfully writes, composes or publishes any notice or advertisement of any medicine or means for producing or facilitating a miscarriage or abortion, or for the prevention of conception, or who offers his services by any notice, advertisement or otherwise, to assist in the accomplishment of any such purpose is guilty of a misdemeanor.

SEC. 342. Whoever through invitation or device, prevails upon any person, to visit any room, building or other places kept for the purpose of gambling or prostitution is guilty of a misdemeanor.

CHAPTER VIII.

LOTTERIES.

Section 347. Lottery defined.
" *348. Punishment for drawing lottery.*
" *349. Punishment for selling lottery tickets.*
" *350. Aiding lotteries.*
" *351. Lottery offices. Advertising lottery offices.*
" *352. Insuring lottery tickets. Publishing offers to insure.*
" *353. Property offered for disposal in lottery forfeited.*
" *354. Letting building for lottery purposes.*
" *355. Lotteries out of this State.*
" *356. Punishment.*

SEC. 347. A lottery is any scheme for the disposal or distribution of property by chance, among persons who have paid or promised to any valuable consideration for the chance of obtaining such property or a portion of it, or for any share or interest in such property, upon any agreement, understanding, or expectation that it is to be distributed or disposed of by lot or chance, whether called a lottery, raffle or gift enterprise, or by whatever name the same may be known.

SEC. 348. Every person who contrives, prepares, sets up, proposes or draws any lottery is guilty of a misdemeanor.

SEC. 349. Every person who sells, gives, or in any manner whatever furnishes or transfers to or for any other person, any ticket, chance, share or interest or any paper, certificate or instrument purporting or understood to be or to represent any ticket, chance, share, or interest in, or depending upon the event of any lottery is guilty of a misdemeanor.

SEC. 350. Every person who aids or assists, either by printing, writing, advertising, publishing or otherwise, in setting up, managing or drawing any lottery or in selling or disposing of any ticket, chance, or share therein, is guilty of amisdemeanor.

SEC. 351. Every person who opens, sets up or keeps, by himself or by any other person, any office or any other place for the sale of, or for registering the number of any ticket in any lottery within or without this State, or who by printing, writing, or otherwise, advertises or publishes the setting up, opening, or using of, any such office is guilty of a misdemeanor.

SEC. 352. Every person who insures or receives any consideration for insuring for or against the drawing of any ticket in any lottery whatever, whether drawn or to be drawn within this State or not, or who receives any valuable consideration upon any agreement to repay any sum or deliver the same, or any other property if any lottery ticket or number of any ticket in any lottery shall prove fortunate or unfortunate, or shall be drawn or not be drawn at any particular time, or in any particular order, or who promises or agrees to pay any sum of money, or to deliver any goods, things in action or property, or to forbear to do anything for the benefit of any person, with or without consideration, upon any event or contingency, dependent on the drawing of any ticket in any lottery, or who publishes any notice or proposal of any of the purposes aforesaid, is guilty of a misdemeanor.

SEC. 353. All moneys or property offered for sale or distribution in violation of any of the provisions of this chapter, are forfeited to the State, and may be recovered by information filed, or by an action brought by the Attorney-General, or by any county attorney in the name of the State. Upon the filing of the information or complaint, the clerk of the court, or, if the suitis in a justice's court, the justice, must issue an attachment against the property mentioned in the complaint or information, which attachment has the same force and effect against such property, and is issued in the same manner as attachments are issued from the district courts in civil cases.

SEC. 354. Every person who lets, or permits to be used, any building or vessel, or any portion thereof, knowing that it is to be used for setting up, managing, or drawing, any lottery, or for the purpose of selling or disposing of lottery tickets, is guilty of a misdemeanor.

SEC. 355. The provisions of this chapter are applicable to lotteries drawn or to be drawn out of this State, whether authorized or not by the laws of the State or country where they are drawn or to be drawn, in the same manner as to lotteries drawn or to be drawn within this State.

SEC. 356. Every person convicted of any of the offenses mentioned in this chapter, is punishable by imprisonment in the county jail not exceeding one year, or by fine not exceeding two thousand dollars or both.

CHAPTER IX.

GAMING.

Section 360. Gaming prohibited. Penalty.
" *361. Permitting gambling in houses owned or rented.*
" *362. Winning at play by fraudulent means.*
" *363. Witnesses neglecting or refusing to attend trial.*
" *364. Witness' privilege.*
" *365. Duties of county attorneys, sheriffs and others.*
" *366. Permitting minor to play in saloon.*
" *367. Pretending to give authority to conduct games.*

SEC. 360. Every person who deals, plays, carries on, opens, or causes to be opened, or who conducts, either as owner or employe, whether for hire or not, any game of faro, monte, roulette, lansquenet, rouge et noire, rondo, tan, fan-tan, stud-horse poker, seven-and-a-half, twenty-one, or any banking or percentage game played with cards, dice, or any device for money, checks, credit or any representative of value, is punishable by fine not less than two hundred nor more than one thousand dollars, and msut be imprisoned in the county jail until such fine and costs of prosecution are paid, such imprisonment not to exceed one year; and every person who plays or bets at, or against any of said prohibited game or games, is guilty of a misdemeanor.

SEC. 361. Every person who knowingly permits any of the games mentioned in the preceding section to be played, conducted or dealt in any house owned or rented by such person, in whole or in part, is punishable as provided in the preceding section.

SEC. 362. Every person who, by the game of "three-card monte," so-called, or any other game, device, sleight-of-hand, pretensions to fortune telling, trick, or other means whatever, by use of cards or other instrument or implements, or while betting on sides or hands of any such play or game, fraudulently obtains from another person money or property of any description, must be punished as in case of larceny of property of like value.

SEC. 363. Every person duly summoned as a witness for the prosecution, on any proceedings had under this chapter, who neglects or refuses to attend, as required, is guilty of a misdemeanor.

SEC. 364. No person, otherwise competent as a witness, is disqualified from testifying as such concerning the offense of gaming, on the ground that such testimony may criminate himself; but no prosecution can afterwards be had against him for any offense concerning which he testified.

SEC. 365. Every county attorney, sheriff, constable or police officer must inform against and diligently prosecute persons whom they have reasonable cause to believe offenders against the provisions of this chapter, and every such officer refusing or neglecting so to do, is guilty of a misdemeanor.

SEC. 366. Every owner, or lessee, or keeper of any house used in whole or in part as a saloon or drinking place, who knowingly permits any person under twenty-one years of age to play at any game of chance therein, is guilty of a misdemeanor.

SEC. 367. Every State, county, city, town or township officer or other person who shall ask for, receive, or collect, any money, or other valuable consideration, either for his own or the public use, for and with the understanding that he will aid, exempt, or otherwise assist any person from arrest or conviction for a violation of section 360 of the Penal Code, or who shall issue, deliver, or cause to be given or delivered to any person or persons any license, permit, or other privilege, giving or pretending to give any authority or right to any person or persons to carry on, conduct, open or cause to be opened, any game or games which are forbidden by section 360 of said code; and any such officer or officers who shall vote for the passage of any ordinance or by-law giving, granting, or pretending to give or grant to any person or persons any authority or privelege to open, carry on, conduct any game or games prohibited by said section 360 of the Penal Code is guilty of felony.

CHAPTER X.

PAWNBROKERS.

Section 370. Pawnbroking without a license.
" *371. Failing to keep register.*
" *372. Charging unlawful rate of interest.*

Section 373. Selling before the time of redemption has expired, or without notice.
" *374. Refusing to disclose particulars of sale.*
" *375. Refusing officer with search warrant to inspect register of pledged articles.*

SEC. 370. Every person who carries on the business of a pawnbroker by receiving goods in pledge for loans at any rate of interest above the rate of ten per cent. per annum, except by authority of a license, is guilty of a misdemeanor.

SEC. 371. Every person who carries on the business of a pawnbroker, who fails at the time of the transaction to enter in a register kept by him for that purpose, in the English language, the date, duration, amount and rate of interest of every loan made by him, or an accurate description of the property pledged, or the name and residence of the pledger, or to deliver to the pledger a written copy of such entry, or to keep an account in writing of all sales made by him is guilty of a misdemeanor.

SEC. 372. Every pawnbroker who charges or receives interest at the rate of more than three per cent. per month, or who, by charging commissions, discount, storage or other charge, or by compounding, increases or attempts to increase such interest, is guilty of a misdemeanor.

SEC. 373. Every pawnbroker who sells any article pledged to him and unredeemed, until it has remained in his possession six months after the last day fixed by contract for redemption, or who makes any sale without publishing in a newspaper printed in the city, town or county, at least five days before such sale, a notice containing a list of the articles to be sold, and specifying the time and place of the sale, is guilty of a misdemeanor.

SEC. 374. Every pawnbroker who willfully refuses to disclose to the pledger or his agent the name of the purchaser and the price received by him for any article received by him in pledge and subsequently sold, or who, after deducting from the proceeds of any sale the amount of the loan and the interest due thereon, and four per cent. on the loan for the expenses of sale, refuses, on demand, to pay the balance to the pledger or his agent, is guilty of a misdemeanor.

SEC. 375. Every pawnbroker who fails, refuses or neglects to produce for inspection his register, or to exhibit all articles received by him in pledge, or his account of sales, to any officer holding a warrant authorizing him to search for personal property, or the order of a committing magistrate directing such officer to inspect such register or examine such articles or account of sales, is guilty of a misdemeanor.

CHAPTER XI.

OTHER INJURIES TO PERSONS.

Section 380. Acts of intoxicated physicians.
" *381. Willfully poisoning food, medicine, or water.*
" *382. Mismanagement of steam boilers.*
" *383. Operating steam boiler without license.*
" *384. Unsafe steam boilers.*
" *385. False certificate of boiler inspector.*
" *386. Counterfeiting trade-marks.*
" *387. Selling goods which bear counterfeit trade-marks.*
" *388. Definition of the phrase "counterfeited trade-marks," etc.*
" *389. "Trade-mark" defined.*
" *390. Refilling casks, etc., bearing trade-mark.*
" *391. Defacing marks upon logs, lumber or wood.*
" *392. Altering brands.*
" *393. Contracting or solemnizing incestuous or for-bidden marriages.*
" *394. Making false return or record of marriage.*
" *395. Cruel treatment of lunatics, etc.*
" *396. Refusing to issue or obey writ of habeas corpus.*
" *397. Reconfining persons discharged upon writ of habeas corpus.*
" *398. Concealing persons entitled to benefit of habeas corpus.*
" *399. Innkeepers and carriers refusing to refusing receive guests.*
" *400. Protection of discharged employes.*
" *401. Inspection of boilers. Penalties.*

SEC. 380. Every physician, who in a state of intoxication, does any act as such physician to another person by which the life of such other person is endangered, is guilty of a misdemeanor.

SEC. 381. Every person who willfully mingles any poison with any food, drink, or medicine, with intent that the same shall be taken by any human being to his injury, and every person who willfully poisons any well, spring or reservoir of water, is punishable by imprisonment in the state prison for a term not less than one or more than ten years.

SEC. 382. Every engineer or other person having charge of any steam boiler, steam engine, or other apparatus for generating or employing steam, used in any manufactory, steamboat, railway, mining, milling or other mechanical works, who willfully or from ignorance, or gross neglect, creates, or allows to be created, such an undue quantity of steam as to burst or break the boiler, or engine, or apparatus, or cause any other accident whereby human life is endangered, is guilty of a felony.

SEC. 383. Every person who operates any steam boiler or steam engine without first obtaining a license from the boiler inspector or assistant boiler inspector, as required by law, is punishable by a fine not exceeding fifty dollars, or by imprisonment in the county jail not exceeding thirty days ,or both.

SEC. 384. Every owner, renter, or user of a steam boiler, who uses a boiler or steam engine which has become unsafe from any cause, or has been notified by the boiler inspector or his assistant, that such boiler or steam engine is unsafe from any defect, or that repairs are necessary, and after such notice, uses the same, is punishable by imprisonment in the county jail not exceeding three months, or by fine not exceeeding two hundred and fifty dollars, or both.

SEC. 385. If the State boiler inspector, or assistant inspector, willfully and falsely certifies regarding any steam boiler, steam engine, or its attachments, or grants a license to any person to act as engineer, contrary to law, he is punishable by imprisonment not exceeding one year in the county jail, or by a fine not exceeding five hundred dollars, or both.

SEC. 386. Every person who willfully forges or counterfeits, or procures to be forged or counterfeited, any trademark usually affixed by any person to his goods, which has been recorded in the office of the Secretary of State, with intent to pass off any goods to which such forged or counterfeited trademark is affixed, or intended to be affixed, as the goods of such person, is guilty of a misdemeanor.

SEC. 387. Every person who sells or keeps for sale, any goods upon or to which any counterfeited trademark has been affixed, after such trademark has been recorded in the office of the Secretary of State, intending to represent such goods as the genuine goods of another, knowing the same to be counterfeited, is guilty of a misdemeanor.

SEC. 388. The phrases "forged trademark" and "counterfeited trademark," or their equivalents, as used in this chapter, include every alteration or imitation of any trademark so resembling the original as to be likely to deceive.

SEC. 389. The phrase "trademark," as used in the three preceding sections, includes every description of word, letter, device, emblem, stamp, imprint, brand, printed ticket, label, wrapper, usually affixed by any mechanic, manufacturer, druggist, merchant or tradesman, to denote any goods to be goods imported, manufactured, produced, compounded or sold by him, other than any name, word, or expression generally denoting any goods to be of some particular class or description.

SEC. 390. Every person who has or uses any cask, bottle, siphon, vessel, case, box cover, label, or other thing bearing or having in any way connected with it the duly filed trademark or name of another, for the purpose of disposing, with intent to deceive or defraud, of any article other than that which such cask, vessel, bottle, case, cover, label or other thing originally contained, or was connected with, by the owner of such trademark or name, is guilty of a misdemeanor.

SEC. 391. Every person who cuts out, alters or defaces any mark made upon any log, lumber or wood, or puts a false mark thereon, with intent to prevent the owner from discovering its identity, is guilty of a misdemeanor.

SEC. 392. Every person who marks or brands, alters or defaces the mark or brand, of any horse, mare, colt, jack, jennet, mule, bull, ox, steer, cow, calf, sheep, goat, hog, shoat or pig, belonging to another, with the intent thereby to steal the same, or to prevent identification thereof by the true owner, is punishable by imprisonment in the state prison for not less than one nor more than five years.

SEC. 393. Every person authorized to solemnize marriage, who willfully and knowingly solemnizes any incestuous or other marriage forbidden by law, is punishable by fine not less than one hundred nor more than one thousend dollars, or imprisonment in the county jail not less than one year nor more than two years, or both.

SEC. 394. Every person authorized to solemnize any marriage, who willfully makes a false return of any marriage or pretended marriage, to the county clerk, and every person who willfully makes a false record of any marriage return, is punishable as provided in the preceding section.

SEC. 395. Every person guilty of any harsh, cruel or unkind treatment or any neglect of duty towards any idiot, lunatic, or insane person, is guilty of a misdemeanor.

SEC. 396. Every officer or person to whom a writ of habeas corpus may be directed, who, after services thereof, neglects or refuses to obey the command thereof, is guilty of a misdemeanor.

SEC. 397. Every person who, either solely or as a member of court, knowingly and unlawfully recommits, imprisons, or restrains of his liberty, for the same cause, any person who has been discharged upon a writ of habeas corpus, is guilty of a misdemeanor.

SEC. 398. Every person having in his custody, or under his restraint or power, any person for whose relief a writ of habeas corpus has been issued, who, with the intent to elude the service of such writ, or to avoid the effect thereof, transfers such person to the custody of another, or places him under the power or control of another, or conceals or changes the place of his confinement, or restraint, or removes him without the jurisdiction of the court or judge issuing the writ, is guilty of a misdemeanor.

SEC. 399. Every person, and every agent or officer of any corporation, carrying on business as an innkeeper, or as a common carrier of passengers, who refuses, without just cause or excuse, to receive and entertain any guest, or to receive and entertain any passenger, is guilty of a misdemeanor.

SEC. 400. Every person who violates any of the provisions of Chapter XXI., Title VII., Part III. of the Political Code, relating to the protection of discharged employes, and the prevention of blacklisting, is guilty of a misdemeanor.

SEC. 401. Every person who violates any of the provisions of Article XV., Chapter III., Title I., Part III. of the Political Code, relating to boiler inspection, except as otherwise provided, is guilty of a misdemeanor.

TITLE X.

CRIMES AGAINST THE PUBLIC HEALTH AND SAFETY.

Section 405. Death from explosions, etc.
" *406. Death from collision on railroads.*
" *407. "Public nuisances" defined.*
" *408. Unequal, damage.*
" *409. Maintaining a nuisance a misdemeanor.*
" *410. Establishing or keeping a pest house within cities, towns, etc.*
" *411. Putting dead animals in streets, rivers, etc.*
" *412. Willful violation of health laws.*
" *413. Neglecting to perform duties under health laws.*
" *414. Apothecary omitting to label drugs, or labeling them wrongfully, etc.*
" *415. Selling opium, etc.*
" *416. Putting extraneous substances in packages of goods usually sold by weight, with intent to increase weight.*
" *417. Adulterating food, drugs, liquors, etc.*
" *418. Disposing of tainted food, etc.*
" *419. Oleomargarine.*
" *420. Same.*
" *421. Penalty.*
" *422. Obstructing attempts to extinguish fires.*
" *423. Riding or driving faster than a walk on public bridges.*
" *424. Engineer of locomotive engine omitting to ring bell when crossing highway.*
" *425. Intoxication of engineers, conductors or drivers of locomotives or cars.*
" *426. Placing passenger cars in front of freight cars.*
" *427. Violation of duty by employes of railroad companies.*
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Section 430. Frauds practices to affect the market price.
" *431. Selling fire-arms and ammunition to Indians.*
" *432. Death from mischievous animals.*
" *433. Aiding or encouraging suicide a felony.*
" *434. Exhibiting deformities of person.*
" *435. Using or exposing animal with glanders.*
" *436. Animal having glanders to be killed.*
" *437. Adulterating candy.*
" *438. Unsafe buildings.*
" *439. Unsafe shafts, etc.*
" *440. Safety cages.*
" *441. Practicing medicine without a license.*
" *442. Keeping gunpowder, etc.*
" *443. Same.*
" *444. Selling liquor on line of railroad.*
" *445. Regulation of coal mines.*
" *446. Sale of kerosene and coal oil.*
" *447. Animals killed by railroads.*
" *448. Violating railroad regulations.*
" *449. Inspection of mine—Penalties. Dams and reservoirs, unsafe.*

SEC. 405. Every person having charge of a steam boiler or steam engine, or other apparatus for generating or employing steam, used in any manufactory, or on a railroad, or in any vessel, or in any kind of mining, milling or mechanical works, who willfully, or from ignorance or neglect, creates or allows to be created such an undue quantity of steam as to burst or break the boiler, engine or apparatus, or to cause any other accident, whereby the death of a human being is produced, is punishable by imprisonment in the State prison, for not less than one nor more than ten years.

SEC. 406. Every conductor, engineer, brakeman, switchman or other person having charge, wholly or in part, of any railroad car, locomotive or train, who willfully or negligently suffers or causes the same to collide with another car, locomotive or train, or with any other object or thing, whereby the death of a human being is produced, is punishable by imprisonment in the State prison for not less than one nor more than ten years.

SEC. 407. Anything which is injurious to health, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, by an entire community or neighborhood, or by any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake or river, bay, stream, canal or basin, or any public park, square, street or highway, is a public nuisance.

SEC. 408. Any act which affects an entire community or neighborhood, or any considerable number of persons, as specified in the last section, is not less a nuisance because the extent of the annoyance or damage inflicted upon individuals, is unequal.

SEC. 409. Every person who maintains or commits any public nuisance, the punishment for which is not otherwise prescribed, or who willfully omits to perform any legal duty which relates to the removal of a public nuisance, is guilty of a misdemeanor.

SEC. 410. Every person who establishes or keeps, or causes to be established or kept, within the limits of any city, town, or village, any pest house, hospital or place for persons affected with contagious or infectious diseases, is guilty of a misdemeanor.

SEC. 411. Every person who puts the carcass of any dead animal, or the offal from any slaughter-pen, corral or butcher shop, into any river, creek, pond or reservoir, stream, street, alley, public highway or road in common use, or who attempts to destroy the same by fire within one-fourth mile of any city, town or village, and every person who puts the carcass of any dead animal, or any offal of any kind, in or upon the borders of any stream, pond, lake or reservoir, from which water is drawn for the supply of the inhabitants of any city or town in this State, so that the drainage from such carcass or offal may be taken up by or in such stream, pond, lake or reservoir, or who allows the carcass of any dead animal, or any offal of any kind, to remain in or upon the borders of any such stream, pond, lake or reservoir within the boundaries of any land owned or occupied by him, or who keeps any horses, mules, cattle, swine, sheep or live stock of any kind, penned, corralled or housed on, over or on the borders of any such stream, pond, lake, or reservoir, so that the waters thereof shall become polluted by reason thereof, is guilty of a misdemeanor, and upon conviction thereof shall be punished as prescribed in section 412 of this Code.

SEC. 412. Every person who willfully violates any of the laws of this State, relating to the preservation of the public health, is, unless a different punishment is prescribed by this Code, punishable by imprisonment in the county jail not exceeding one year or by fine not exceeding one thousand dollars, or both.

SEC. 413. Every person charged with the performance of any duty under the laws of this State, relating to the preservation of the public health, who willfully neglects or refuses to perform the same, is guilty of a misdemeanor.

SEC. 414. Every apothecary, druggist or person carrying on business as a dealer in drugs or medicines, or person employed as clerk or salesman by such person, who, in putting up any drugs or medicines, willfully, negligently, or ignorantly, omits to label the same, or puts an untrue label, stamp or other designation of contents, upon any box, bottle or other package, containing any drugs or medicines, or substitutes a different article for any article prescribed or ordered, or puts up a greater or less quantity of any article than that prescribed or ordered, or otherwise deviates from the terms of the prescription or order which he undertakes to follow, in consequence of which human life or health is endangered, is guilty of a misdemeanor, or if death ensues, is guilty of a felony.

SEC. 415. Every person who sells, or in any way disposes of, to another person, any morphine, opium, cocaine, chloral-hydrate, or any of their compounds, except to a licensed physician, or on the authority of a certificate of such licensed physician, or fails to keep on file at his place of business, any such certificate for inspection of all persons, after the same has been surrendered to him by the buyer of any such drugs, or uses or fills out any such certificate more than once, for the benefit of the person presenting the same, or any other person, is punishable by fine not exceeding two hundred dollars. The provisions of this section do not apply to the sale of paregoric or any other mild compound of any of such drugs, nor do they apply to persons who are sick and in actual need of any of such drugs as a medicine.

SEC. 416. Every person who, in putting up in any bag, bale, box, barrel, or other package, any hops, cotton, wool, grain, hay, or other goods usually sold in bags, bales, boxes, barrels, or packages, by weight, puts in or conceals therein anything whatever, for the purpose of increasing the weight of such bag, bale, box, barrel, or package, with intent thereby to sell the goods therein, or to enable another to sell the same, for an increased weight, is punishable by fine of not less than twenty-five dollars for each offense.

SEC. 417. Every person who adulterates, or dilutes any article of food, drink, drug, medicine, spirituous or malt liquor or wine, or any article used in compounding them, with a fraudulent intent, to offer the same or cause or permit it to be offered for sale as unadulterated or undiluted, and every person who fraudulently sells, or keeps or offers for sale the same, as unadulterated or undiluted, is guilty of a misdemeanor.

SEC. 418. Every person who sells, or keeps for sale, or otherwise disposes of any article of food, drink, drug or medicine, knowing that the same has become tainted, decayed, spoiled, or otherwise unwholesome, or unfit to be eaten or drank, with intent to permit the same to be eaten or drank, is guilty of a misdemeanor.

SEC. 419. Every person who manufactures for sale, or offers or exposes for sale, or has in his possession, with intent to sell any article or substance in resemblance of butter or cheese, not the legitimate product of the dairy, and not made exclusively of milk or cream, or into which the oil or fat of animals not produced from milk, enters as a component part, or into which the oil or fat of animals not produced from milk has been introduced to take the place of cream, must distinctly stamp, brand or mark in some conspicuous place upon every firkin, tub or package of such article or substance, in plain letters not less than one-fourth inch square each, the word "Oleomargarine," or the words "Imitation cheese," as the case may be; and in the retail sale of such article or substance, in parcels or otherwise, the seller must deliver to the purchaser therewith, a printed label, bearing the plainly printed word or words "Oleomargarine" or "Imitation cheese," plainly marked as aforesaid.

SEC. 420. Every person dealing in the article or substance described in the next preceding section, and every hotel, restaurant, or boarding house keeper, using such article or substance in his business, must continuously and conspicuously keep posted up in not less than three exposed positions, in and about his place of business, a printed notice in the following words: "Oleomargarine" or "Imitation cheese" "sold (or used) here," which notice must be plainly printed with letters not less than two inches square each, and must upon the furnishing the article or substance to his customers or guests, if inquiry is made, distinctly inform each of them that the article furnished is not butter or cheese the genuine product of the dairy, but is oleomargarine or imitation cheese.

SEC. 421. Every person, and every officer or agent, of any corporation who violates any of the provisions of the last two preceding sections, is punishable by imprisonment in the county jail not exceeding one month or by fine not exceeding one hundred dollars.

SEC. 422. Every person who, at the burning of a building, disobeys the lawful orders of any public officer or fireman, or offers any resistance to, or interferes with the lawful efforts of any fireman or any company of firemen, to extinguish the same, or engages in any disorderly conduct calculated to prevent the same from being extinguished, or who forbids, prevents or dissuades others from assisting to extinguish the same, is guilty of a misdemeanor.

SEC. 423. Every person who willfully rides or drives faster than a walk, on or over, any public bridge, and every person who drives any loose stock, such as horses, mules or cattle over any public bridge in a larger number than fifteen head at a time, is punishable by a fine not exceeding twenty dollars.

SEC. 424. Every person in charge of a locomotive engine, who, before crossing any traveled public way, omits to cause a bell to ring, or steam whistle to sound at the distance of at least eighty rods from the crossing, and up to it, is guilty of a misdemeanor.

SEC. 425. Every person who is intoxicated while in charge of a locomotive engine, or while as conductor or driver upon any railroad car or train, whether propelled by steam or otherwise, or while acting as train dispatcher, or as telegraph operator receiving or transmitting dispatches, in relation to the movement of trains, is guilty of a misdemeanor.

SEC. 426. Every person who, in making up or running railroad trains, places or runs, or causes to be placed or run, any freight car in the rear of passenger cars, is guilty of a misdemeanor; and if loss of life or limb results from such placing or running, is guilty of felony. The term "freight car" as used in this section does not include a baggage, express or mail car.

SEC. 427. Every engineer, conductor, brakeman, switch-tender or other officer, agent, or servant of any railroad company, who is guilty of any willful violation or omission of his duty as such officer, agent or servant, whereby human life or safety is endangered, the punishment of which is not otherwise prescribed, is guilty of a misdemeanor.

SEC. 428. Every person or corporation who owns, carries on or has control of a railroad and fails to observe any of the regulations or requirements or perform any of the duties prescribed by law in reference to railroads, the penalty for which is not otherwise provided for in this Code, is punishable by a fine not exceeding five thousand dollars.

SEC. 429. Every person who willfully exposes himself or another infected with any contagious or infectious disease, in any public place or thoroughfare, except in his necessary removal in a manner the least dangerous to the public health, is guilty of a misdemeanor.

SEC. 430. Every person who willfully makes or publishes any false statement, spreads any false rumor, or employs any other false or fraudulent means or device, with intent to affect the market price of any kind of property, is guilty of a misdemeanor.

SEC. 431. Every person who sells or furnishes to any Indian any fire-arm or ammunition therefor, is guilty of a misdemeanor.

SEC. 432. If the owner of a mischievous animal, knowing its propensities, willfully suffers it to go at large, or keeps it without ordinary care, and such animal while so at large, or while not kept with ordinary care, kills any human being who has taken all the precautions which the circumstances permitted, or which a reasonable person would ordinarily take in the same situation, is guilty of a felony.

SEC. 433. Every person who deliberately aids, or advises or encourages another to commit suicide is guilty of a felony.

SEC. 434. Every person exhibiting the deformities of another, or his own deformities, for hire, is guilty of a misdemeanor; and every person who shall by any artificial means give to any person the appearance of a deformity, and shall exhibit such person for hire, is guilty of a misdemeanor.

SEC. 435. Any person who shall knowingly sell or offer for sale or use, or expose, or who shall cause or procure to be sold or offered for sale, or used, or exposed, any horse, mule, or other animal having the disease known as glanders, farcy, or any contagious disease, or violates any of the provisions of Section 2047 of the Political Code, is guilty of a misdemeanor.

SEC. 436. Every animal having glanders or farcy, shall at once be deprived of life by the owner or person having charge thereof, upon discovery or knowledge of its condition; and any such owner or person omitting or refusing to comply with the provisions of this section, is guilty of a misdemeanor.

SEC. 437. Every person who adulterates candy by using in its manufacture glucose, terra alba, or any other deleterious substance or substances, or who sells or keeps for sale any candy or candies adulterated with glucose or terra alba or any other deleterious substance or substances, is guilty of a misdemeanor.

SEC. 438. Every person who constructs, owns, controls or has the custody of any building erected to accommodate public assemblies, including churches, schools, court houses, theaters, public halls, ball rooms, or any other building of like character, and fails to have the openings for ingress and egress therein furnished with doors hung on hinges so that they open outwardly from the rooms and from the main building itself, is punishable by imprisonment in the county jail not exceeding three months or by fine not exceeding two hundred and fifty dollars, or both, and the building or buildings owned by such persons may by order of the court be closed until the doors thereof be made to conform to the provisions of this section.

SEC. 439. Every person who sinks any shaft or runs any drift or cut, or causes the same to be done within twenty feet of any trail, street, road, or public highway who fails within ten days ftom the time the shaft or drift is sunk or run to place a substantial cover over or fence around the same, is punishable by a fine not exceeding one hundred dollars. Mining and irrigating ditches may be dug or cut to a depth not exceeding three feet without incurring the penalty of this section.

SEC. 440. It is unlawful for any person or corporation to sink or work through any vertical shaft where mining cages are used at a greater depth than three hundred feet unless the said shaft shall be provided with an iron-bonneted safety cage to be used in the lowering and the hoisting of the employes thereof. The safety apparatus, whether consisting of eccentrics, springs or other device, must be securely fastened to the cage and must be of sufficient strength to hold the cage loaded at any depth to which the shaft may be sunk. The iron bonnet aforesaid must be made of boiler sheet iron of good quality of at least three-sixteenths of an inch in thickness, and must cover the top of such cage in such a manner as to afford the greatest protection to life and limb from anything falling down said shaft. Every person or corporation failing to comply with the provisions of this section is punishable by fine not exceeding one thousand dollars.

SEC. 441. Every person who practices medicine or surgery within this State without first having obtained the certificate to practice, as provided by law or contrary to the provisions of the act to regulate the practice of medicine in Montana, is punishable by imprisonment in the county jail not exceeding ninety days or by a fine not exceeding five hundred dollars, or both.

SEC. 442. Every person who within the limits of any city or town deposits or keeps any powder, gunpowder, giant powder, or other highly explosive substance, or keeps or establishes any powder-house, magazine or storehouse where such explosives are kept within the limits of any city or town or within one-half mile of any residence, is punishable by a fine not exceeding one hundred dollars.

SEC. 443. Every person who builds or maintains a powder-house or magazine for the storage of powder or other highly explosive substance constructed in any manner different from that provided by law is punishable by a fine not exceeding one hundred dollars. This and the preceding section do not prevent the keeping of a reasonable supply of powder in a safe place at a mine or an amount of ordinary gunpowder, not exceeding fifty pounds, in a safe place for sale.

SEC. 444. Every person who sells, furnishes, or gives away any spirituous or malt liquor, wine or cider or any beverage containing any intoxicating liquor within two miles of the line of any railroad grade in the course of construction or on which track is being laid is punishable by imprisonment in the county jail not exceeding sixty days or by a fine not exceeding one hundred dollars, or both. The provisions of this section do not apply to the selling, furnishing or giving away intoxicating liquor, wine or cider within the limits of any town or city.

SEC. 445. Every person who violates any of the provisions of Chapter 20, Title VII., Part III., of the Political Code, relating to the regulation of coal mines, is guilty of a misdemeanor.

SEC. 446. Every person who violates any of the provisions of Chapter 21, Title VII., Part III., of the Political Code, relating to the sale of kerosene and coal oil, is guilty of a misdemeanor.

SEC. 447. Except as otherwise provided, every person who violates any of the provisions of Chapter 3, Title VIII., Part IV., Division 1, of the Civil Code, relating to live stock killed or injured by railroads, is guilty of a misdemeanor.

SEC. 448. Every person who violates any of the provisions of Section 552 of the Civil Code, relating to the regulations of railroad companies, must on conviction of any of the offenses therein named be punished by a fine not less than five hundred nor more than ten thousand dollars.

SEC. 449. Every person who violates any of the provisions of Article XIV., Chapter 3, Part III., of the Political Code, relating to the inspection of mines, and every person who violates any of the provisions of Chapter 24, Title VII., Part III., of the Political Code, relating to dams and reservoirs, is guilty of a misdemeanor.

TITLE XI.

CRIMES AGAINST THE PUBLIC PEACE.

Section 450. Disturbance of public meetings other than religious or political.
" 451. Riot defined.
" 452. Riot, punishment of.
" 453. Rout defined.
" 454. Unlawful assembly defined.
" 455. Punishment of rout and unlawful assembly.
" 456. Remaining present at place of riot, etc., after warning to disperse.
" 457. Magistrates neglecting or refusing to disperse rioters.
" 458. Consequence of resisting process after a county has been declared in a state of insurrection.
" 459. Prize fights.
" 460. Persons present at prize fights.
" 461. Leaving the State to engage in prize fights.
" 462. Boxing matches.
" 463. Disturbing the peace.
" 464. Refusing to disperse upon lawful command.
" 465. Exhibiting deadly weapon in rude, etc., manner, or using the same unlawfully.
" 466. Forcible entry and detainer.
" 467. Returning to take possession of lands after being removed by legal proceedings.
" 468. Carrying concealed weapons.
" 469. Bringing armed men into the State.

SEC. 450. Every person who, without authority of law, disturbs or breaks up any assembly or meeting, not unlawful in its character, other than such as is mentioned in Sections 60 and 323, is guilty of a misdemeanor.

SEC. 451. Any use of force or violence, disturbing the public peace, or any threats to use force or violence if accompanied by immediate power of execution, by two or more persons acting together, and without authority of law, is a riot.

SEC. 452. Any person who participates in any riot is punishable by imprisonment in the county jail not exceeding two years, or by fine not exceeding two thousand dollars, or both.

SEC. 453. Whenever two or more persons, assembled and acting together, make any attempt or advance toward the commission of an act which would be a riot if actually committed, such assembly is a rout.

SEC. 454. Whenever two or more persons assemble together to do an unlawful act, and separate without doing or advancing toward it, or to do a lawful act in a violent, boisterous, or tumultuous manner, such assembly is an unlawful assembly.

SEC. 455. Every person who participates in any rout or unlawful assembly is guilty of a misdemeanor.

SEC. 456. Every person remaining present at the place of any riot, rout, or unlawful assembly, after the same has been lawfully warned to disperse, except public officers and persons assisting them in attempting to disperse the same, is guilty of a misdemeanor.

SEC. 457. If a magistrate having notice of an unlawful or riotous assembly, mentioned in this chapter, neglects to proceed to the place of assembly, or as near thereto as he can with safety, and to exercise the authority with which he is invested for suppressing the same and arresting the offenders, he is guilty of a misdemeanor.

SEC. 458. A person who, after the publication of the proclamation authorized by Section 886, resists or aids in resisting the execution of process in any county declared to be in a state of insurrection, or who aids or attempts the rescue or escape of another from lawful custody or confinement, or who resists, or aids in resisting any force ordered out by the governor to quell or suppress an insurrection, is punishable by imprisonment in the state prison not less than two years.

SEC. 459. Every person who engages in, instigates, encourages, or promotes any ring or prize fight, or any other premeditated fight or contention (without deadly weapons) either as principal, aid, second, umpire, surgeon or otherwise, is punishable by imprisonment in the state prison not exceeding two years.

SEC. 460. Every person willfully present as a spectator at any fight or contention mentioned in the preceding section is guilty of a misdemeanor.

SEC. 461. Every person who leaves this State with intent to evade any of the provisions of the last two sections, and to commit any act out of this State, such as is prohibited by them, and who does any act which would be punishable under these provisions if committed within this State, is punishable in the same manner as he would have been in case such act had been committed within this State.

SEC. 462. Every person who engages in, instigates, encourages, or promotes as principal, aid, second, umpire, or otherwise, any boxing, wrestling or slugging match, with or without gloves, or who attends or is present at such a contest, or hires, rents or permits the use of any building or grounds for such purposes, is guilty of a misdemeanor. This section does not apply to boxing with soft gloves in any gymnasium for exercise.

SEC. 463. Every person who willfully and maliciously disturbs the peace of any neighborhood or person, by loud or unusual noise, or by tumultuous or offensive conduct, or threatening, traducing, quarreling, challenging to fight or fighting, or who, on the public streets of any town, or upon the public highways, runs any horse race, either for a wager or for amusement, or fires any gun or pistol in such town, or uses any vulgar, profane or indecent language within the presence or hearing of any women or children, in a loud and boisterous manner, is punishable by fine not exceeding two hundred dollars, or by imprisonment in the county jail for not more than ninety days, or both.

SEC. 464. If two or more persons assemble for the purpose of disturbing the public peace, or committing any unlawful act, and do not disperse on being desired or commanded so to do by a public officer, the persons so offending are severally guilty of a misdemeanor.

SEC. 465. Every person who, not in necessary self defense, in the presence of two or more persons, draws or exhibits any deadly weapon in a rude, angry, and threatening manner, or who in any manner unlawfully uses the same in any fight or quarrel, is guilty of a misdemeanor.

SEC. 466. Every person using or procuring, encouraging or assisting another to use any force or violence in entering upon or detaining any lands or other possessions of another, except in the cases and in the manner allowed by law, is guilty of a misdemeanor.

SEC. 467. Every person who has been removed from any land by process of law or who has been removed from any lands pursuant to the lawful adjudication or direction of any court, tribunal or officer, and who afterwards returns to settle, reside upon or take possession of such lands is guilty of a misdemeanor.

SEC. 468. Every person who within the limits of any city or town carries or bears concealed upon his person a dirk, dagger, pistol, revolver, or other deadly weapon is punishable by a fine not exceeding one hundred dollars. This section does not apply to peace officers in discharge of their official duty.

SEC. 469. Every person who brings into this State an armed person or armed body of men for the preservation of the peace or the suppression of domestic violence, except at the solicitation and by the permission of the Legislative Assembly or of the Governor, is punishable by imprisonment in the state prison not exceeding ten years and by a fine not exceeding ten thousand dollars.

TITLE XII.

CRIMES AGAINST THE REVENUE AND PROPERTY OF THE STATE.

Section 475. Embezzlement and falsification of accounts by public officers.
" 476. Officers neglecting to pay over public moneys.
" 477. "Public moneys" as used in the preceding section defined.
" 478. Failure to pay over fines and forfeitures received a misdemeanor.
" 479. Obstructing officer in collecting revenue.
" 480. Refusing to give assessor list of property, or giving false name.
" 481. Making false statement, not under oath, in reference to taxes.
" 482. Delivering receipts for poll taxes other than prescribed by law, or collecting poll taxes, etc., without giving the receipt prescribed by law.
" 483. Having blank receipts for licenses other than those prescribed by law.
" 484. Refusing to give name of person in employment, etc.
" 485. Carrying on business without license.
" 486. Unlawfully acting as auctioneer.
" 487. Officer charged with collection, etc., of revenue, refusing to permit inspection of his books.
" 488. Board of examiners, auditor and treasurer neglecting certain duties.
" 489. Having State arms, etc.
" 490. Selling State arms, etc.
" 491. Sheriff falsely representing accounts.
" 492. Persons and banks not to receive public money.

SEC. 475. Every officer of this state, or of any county, city, town, or district of this state, and every other person charged with the receipt, safe keeping, transfer, or disbursement of public moneys, who either—

1. Without authority of law, appropriates the same, or any portion thereof, to his own use, or to the use of another; or,

2. Loans the same, or any portion thereof; or having the possession or control of any public money, makes profit out of it, or uses the same for any purpose not authorized by law; or,

3. Fails to keep the same in his possession until disbursed or paid out by authority of law; or,

4. Unlawfully deposits the same, or any portion thereof, in any bank, or with any banker or other person; or,

5. Changes or converts any portion thereof from coin into currency or from currency into coin or other currency, without authority of law; or,

6. Knowingly keeps any false account, or makes any false entry or erasure in any account of or relating to the same; or,

7. Fraudulently alters, falsifies, conceals, destroys or obliterates any such account; or,

8. Willfully refuses or omits to pay over, on demand, any public moneys in his hands, upon the presentation of a draft, order, or warrant drawn upon such moneys by competent authority; or,

9. Willfully omits to transfer the same when such transfer is required by law; or,

10. Willfully omits or refuses to pay over to any officer or person authorized by law to receive the same, any money received by him under any duty imposed by law so to pay over the same,

Is punishable by imprisonment in the State prison not less than one nor more than ten years, and is disqualified from holding any office in this State.

SEC. 476. Every officer charged with the receipt, safe-keeping, or disbursement of any public moneys, who neglects or fails to keep and pay over the same in the manner prescribed by law, is guilty of felony.

SEC. 477. The phrase "public moneys," as used in this Code, includes all bonds and evidences of indebtedness, and all moneys belonging to the State, or any city, county, town, or district therein, and all moneys, bonds, and evidences of indebtedness received or held by State, county, city or town officers in their official capacity.

SEC. 478. If any clerk, justice of the peace, sheriff, or constable, who receives any fine or forfeiture, refuses or neglects to pay over the same according to law, and within thirty days after the receipt thereof, is guilty of a misdemeanor.

SEC. 479. Every person who willfully obstructs or hinders any public officer from collecting any revenue, taxes, or other sums of money in which this State is interested, and which such officer is by law empowered to collect, or who obstructs or hinders any public officer in the discharge of his duty, is guilty of a misdemeanor.

SEC. 480. Every person who unlawfully refuses, upon demand, to give to any county assessor a list of his property subject to taxation, or to swear to such list, or who gives a false name or fraudulently refuses to give his true name to any assessor, when demanded by such assessor, in the discharge of his official duties, is guilty of a misdemeanor.

SEC. 481. Every person who, in making any statement, not upon oath, oral or written, which is required or authorized by law to be made, as the basis of imposing any tax or assessment or of an application to reduce any tax or assessment, willfully states anything which he knows to be false, is guilty of a misdemeanor.

SEC. 482. Every person who uses or gives any receipt, except that prescribed by law, as evidence of the payment of any poll tax, road tax or license of any kind, or who receives payment of such tax or license without delivering the receipt prescribed by law, or who inserts the name of more than one person therein, is guilty of a misdemeanor.

SEC. 483. Every person who has in his possession, with intent to circulate or sell, any blank licenses or poll tax receipts other than those furnished by the auditor, is guilty of a felony.

SEC. 484. Every person who, when requested by the collector of taxes or licenses, refuses to give to such collector the name and residence of each man in his employment, or to give such collector access to the building or place where such men are employed, is guilty of a misdemeanor.

SEC. 485. Every person who commences or carries on any business, trade, profession, or calling, for the transaction or carrying on of which a license is required by any law of this State, without taking out or procuring a license prescribed by such law, is guilty of a misdemeanor.

SEC. 486. Every person who acts as an auctioneer in violation of the laws of this State relating to auctions and auctioneers, is guilty of a misdemeanor.

SEC. 487. Every officer charged with the collection, receipt, or disbursement of any portion of the revenue of this State, who, upon demand fails or refuses to permit the state examiner, state auditor or attorney general to inspect his books, papers, receipts and records pertaining to his office, and every person who violates any of the provisions of Section 323 of the Political Code, is guilty of a misdemeanor.

SEC. 488. Every member of the board of examiners, and every state auditor or state treasurer, who violates any of the provisions of the laws of this State relating to the board of examiners, or prescribing its powers and duties, is guilty of a felony.

SEC. 489. Every person who unlawfully retains in his possession any arms, equipments, clothing, or military stores belonging to the state, or the property of any company of the state militia, is guilty of a misdemeanor.

SEC. 490. Every member of the state militia who unlawfully disposes of any arms, equipments, clothing or military stores, the property or this State, or of any company of the state militia, is guilty of a misdemeanor.

SEC. 491. Every person who violates any of the provisions of Sections 3163 and 3164 of the Political Code, relating to sheriff is guilty of a felony.

SEC. 492. Every officer of a bank, banking association or corporation, or any person who receives or takes into his possession any public money, except as a special deposit for safe keeping, or pays to any public officer or other person, any interest, money or other consideration for the use of any public money, is guilty of a felony.

TITLE XIII.

CRIMES AGAINST PROPERTY.

Chapter I. Arson.
" *II. Burglary and housebreaking.*
" *III. Having possession of burglarious instruments and deadly weapons.*
" *IV. Forgery and counterfeiting.*
" *V. Larceny.*
" *VI. Extortion.*
" *VII. False personation and cheats.*
" *VIII. Fraudulent destruction of property insured.*
" *IX. False weights and measures.*
" *X. Fraudulent conveyances.*
" *XI. Fraudulent insolvencies by corporations, and other frauds in their management.*
" *XII. Fraudulent issue of documents of title to merchandise.*
" *XIII. Malicious injuries to railroad bridges, highways, bridges and telegraphs.*

CHAPTER I.

ARSON.

Section 500. Arson defined.
" *501. "Building" defined.*
" *502. "Inhabited building" defined.*
" *503. "Night time" defined.*
" *504. "Burning" defined.*
" *505. Ownership of the building.*
" *506. Degrees of arson.*
" *507. Arson of the first degree. Arson of the second degree.*
" *508. Punishment of arson.*

SEC. 500. Arson is the willful and malicious burning of a building with intent to destroy it.

SEC. 501. Any house, edifice, structure, vessel, railroad car or other erection capable of affording shelter for human beings or appurtenant to or connected with an erection so adapted is a "building" within the meaning of this chapter.

SEC. 502. Any building which has usually been occupied by any person lodging therein at night is an "inhabited building" within the meaning of this chapter.

SEC. 503. The phrase "night time" as used in this chapter means the period between sunset and sunrise.

SEC. 504. To constitute a burning within the meaning of this chapter it is not necessary that the building set on fire should have been destroyed. It is sufficient that fire is applied so as to take effect upon any part of the substance of the building.

SEC. 505. To constitute arson it is not necessary that a person other than the accused should have had ownership in the building set on fire. It is sufficient that at the time of the burning another person was rightfully in possession of or was actually occupying such building or any part thereof.

SEC. 506. Arson is divided into two degrees.

SEC. 507. Maliciously burning in the night time an inhabited building in which there is at the time some human being is arson in the first degree. All other kinds of arson are of the second degree.

SEC. 508. Arson is punishable by imprisonment in the state prison as follows:

1. Arson in the first degree, for not less than five years.
2. Arson in the second degree for not less than one nor more than ten years.

CHAPTER II.

BURGLARY AND HOUSEBREAKING.

Section 511. "Burglary" defined.
" 512. Punishment of burglary.
" 513. "Housebreaking" defined.
" 514. Word "enter" defined.
" 515. "Night-time" defined.

SEC. 511. Every person who enters any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse or other building, tent, vessel, railroad car, with intent to commit grand or petit larceny or any felony is guilty of burglary.

SEC. 512. Every burglary committed in the night time is burglary in the first degree, and every burglary committed in the daytime is burglary in the second degree.

SEC. 513. Burglary in the first degree is punishable by imprisonment in the State prison for not less than one nor more than fifteen years. Burglary in the second degree is punishable by imprisonment in the State prison for not more than five years.

SEC. 514. The word "enter," as used in this chapter, includes the entrance of the offender into such house, room, apartment, tenement, shop, warehouse, stable, out-house or other building, tent, vessel or railroad car, or the insertion therein of any part of his body, or of any instrument or weapon held in his hand, or used or intended to be used, to threaten or intimidate the inmates, or to detach or remove the property.

SEC. 515. The phrase "night time," as used in this chapter, means the period between sunset and sunrise.

CHAPTER III.

HAVING POSSESSION OF BURGLARIOUS INSTRUMENTS AND DEADLY WEAPONS.

Section 517. Possession of burglarious instruments.
" 518. Having possession of deadly weapons.

SEC. 517. Every person having upon him or in his possession a picklock, crow, key, bit or other instrument or tool with intent feloniously to break or enter into any building, or who shall knowingly make or alter or shall attempt to make or alter any key or other instrument above named so that the same will fit or open the lock of a building without being requested so to do by some person having the right to open the same, or who shall make, alter, or repair any instrument or thing, knowing or having reason to believe that it is intended to be used in committing a misdemeanor or felony, is guilty of a misdemeanor. Any of the structures mentioned in Section 511 of this Code shall be deemed to be a building within the meaning of this section.

SEC. 518. Every person having upon him any deadly weapon with intent to assault another is guilty of a misdemeanor.

CHAPTER IV.

FORGERY AND COUNTERFEITING.

Section 523. Forgery of wills, conveyances, etc.
" 524. Making false entries in records or returns.
" 525. Forgery of public or corporate seals.
" 526. Punishment of forgery.
" 527. Forging telegraphic messages.
" 528. Passing or receiving forged notes.
" 529. Making, passing, or uttering fictitious bills, etc.
" 530. Counterfeiting coin, bullion, etc.
" 531. Punishment of counterfeiting.
" 532. Possessing or receiving counterfeit coin, bullion, etc.
" 533. Making or possessing counterfeit dies or plates.
" 534. Counterfeiting railroad tickets, etc.
" 535. Restoring canceled tickets.

SEC. 523. Every person who with intent to defraud another falsely makes, alters, forges or counterfeits any charter, letters-patent, deed, lease, indenture, writing obligatory, will, testament, codicil, annuity, covenant, bank bill or note, post note, check, draft, bill of exchange, contract, promissory note, due bill for the payment of money, receipt for money or property, passage ticket, power of attorney, or any certificate of any share, right or interest in the stock of any corporation or association, or any auditor's warrant for the payment of money at the treasury, county order or warrant, or request for the payment of money or the delivery of goods or chattels of any kind, or for the delivery of any instrument in writing or acquittance, release or receipt for money or goods, or any acquittance, release or discharge for any debt, account, suit, action, demand, or other thing, real or personal, or any transfer or assurance of money, certificates of shares of stock, goods, chattels or other property whatever, or any letter of attorney or other power to receive money, or to receive or transfer certificates of shares of stock or annuities, or to let, lease, dispose of, alien or convey any goods, chattels, lands or tenements, or other estate, real or personal, or any acceptance or indorsement of any bill of exchange, promissory note, draft, order, or assignment of any bond, writing obligatory, or promissory note for money or other property, or counterfeits or forges the seal or handwriting of another or any official certificate, or utters, publishes, or passes or attempts to pass as true and genuine any of the above named false, altered, forged or counterfeited matters as above specified and described, knowing the same to be false, altered, forged or counterfeited, with intent to prejudice, damage or defraud any person, or who, with intent to defraud, alters, corrupts or falsifies any record of any will, codicil, conveyance or other instrument, the record of which is by law evidence, or any record of any judgment of any court, or the return of any officer to any process of any court, is guilty of forgery.

SEC. 524. Every person who, with intent to defraud another, makes, forges or alters any entry in any book of records, or any instrument purporting to be any record or return specified in the preceding section, is guilty of forgery.

SEC. 525. Every person who, with intent to defraud another, forges or counterfeits the seal of this State, the seal of any public officer authorized by law, the seal of any court of record, or the seal of any corporation, or any other public seal authorized or recognized by the laws of this State, or any other State, government or country, or who falsely makes, forges or counterfeits any impression purporting to be an impression of any such seal, or who has in possession any such counterfeited seal, or impression thereof, knowing it to be counterfeited, and willfully conceals the same, is guilty of forgery.

SEC. 526. Forgery is punishable by imprisonment in the State prison for not less than one nor more than fourteen years.

SEC. 527. Every person who knowingly and willfully sends by telegraph to any person a false or forged message, purporting to be from such telegraph office, or from any other person, or who willfully delivers or causes to be delivered to any person any such message, falsely purporting to have been received by telegraph, or who furnishes or conspires to furnish, or causes to be furnished to any agent, operator or employe, to be sent by telegraph or to be delivered, any such message, knowing the same to be forged or false, with intent to deceive, injure, or defraud another, is punishable by imprisonment in the State prison not exceeding five years, or in the county jail not exceeding one year, or by fine not exceeding five thousand dollars, or by both fine and imprisonment.

SEC. 528. Every person who has in his possession, or receives from another person, any forged promissory note or bank-bill, or bills for the payment of money or property, with the intention to pass the same, or to permit, cause, or procure the same to be uttered or passed with the intention to defraud any person, knowing the same to be forged or counterfeited, or has or keeps in his possession any blank or unfinished note or bank-bill made in the form or similitude of any promissory note or bill for payment of money or property, made to be issued by any incorporated bank or banking company, with intention to fill up or complete such blank and unfinished note or bill, or to permit, or cause, or procure the same to be filled up and completed, in order to utter or pass the same, or to permit or cause or procure the same to be passed, or to defraud any person, is punishable by imprisonment in the State prison for not less than one nor more than fourteen years.

SEC. 529. Every person who makes, passes, utters, or publishes, with intention to defraud any other person, or who, with the like intention, attempts to pass, utter or publish, any fictitious bill, note or check, purporting to be the bill, note or check, or other instrument in writing for the payment of money or property, of some bank, corporation or copartnership, or individual in existence, knowing the bill, note, check or instrument in writing to be fictitious, is punishable by imprisonment in the State prison for not less than one nor more than fourteen years.

SEC. 530. Every person who counterfeits any of the species of gold or silver coin current in this State, or any kind or species of gold dust, gold or silver bullion or bars, dumps, pieces or nuggets or who sells passes or gives in payment such counterfeit coin, dust, bullion, bars, lumps, pieces or nuggets, or permits, causes, or procures the same to be sold, uttered or passed, with intention to defraud any person, knowing the same to be counterfeited, is guilty of counterfeiting.

SEC. 531. Counterfeiting is punishable by imprisonment in the state prison for not less than one nor more than fourteen years.

SEC. 532. Every person who has in his possession, or receives from any other person, any counterfeit gold or silver coin of the species current in this State, or any counterfeit gold dust, gold or silver bullion or bars, lumps, pieces or nuggets, with the intention to sell, utter, or put off, or pass the same, or permits, causes, or procures the same to be sold, uttered or passed with intention to defraud any person, knowing the same to be counterfeit, is punishable by imprisonment in the state prison not less than one nor more than fourteen years.

SEC. 533. Every person who makes, or knowingly has in his possession any die, plate or any apparatus, paper, metal, machine or other thing whatever made use of in counterfeiting coin current in this State, in counterfeiting gold dust, gold or silver bars, bullion, lumps, pieces or nuggets, or in couterfeiting bank notes or bills, is punishable by imprisonment in the state prison not less than one nor more than fourteen years; and all such dies, plates, apparatus, paper, metal or machine, intended for the purpose aforesaid, must be destroyed.

SEC. 534. Every person who counterfeits, forges or alters any check, ticket, order, coupon, receipt for fare or pass, issued by any railroad company, or by any lessee or manager thereof, designed to entitle the holder to ride in the cars of such company, or who utters, publishes or puts into circulation, any such counterfeit or altered ticket, check or order, coupon, receipt for fare or pass, with intention to defraud any such railroad company, or any lessee thereof, or any other person, is punishable by imprisonment in the state prison, or in the county jail, not exceeding one year, or by fine not exceeding one thousand dollars, or both such imprisonment and fine.

SEC. 535. Every person who, for the purpose of restoring to its original appearance and nominal value in whole or in part, removes, conceal, fills up, or obliterates the cuts, marks, punch holes or other evidences of cancellation, from any ticket, check, coupon, receipt for fare or pass, issued by any railroad company or any lessee or manager thereof, canceled in whole or in part, with intent to dispose of by sale or gift, or to circulate the same, or with intent to defraud the railroad company, or lessees thereof, or any other person, or who, with like intention to defraud, offers for sale, or in payment of fare on the railroad of the company, such ticket, check, order, coupon or pass, knowing the same to have been so restored, in whole or in part, is punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars, or both.

CHAPTER V.

LARCENY, INCLUDING EMBEZZLEMENT, OBTAINING PROPERTY BY FALSE PRETENSES, AND FELONIOUS BREACH OF TRUST.

Section 540. Larceny defined.
" *541. Obtaining property by fraudulent draft.*
" *542. Grand and petit larceny.*
" *543. Grand larceny defined.*
" *544. Petit larceny defined.*
" *545. Punishment of grrnd larceny.*
" *546. Punishment of petit larceny.*
" *547. Dogs, property.*
" *548. Larceny of lost property.*
" *549. Larceny of written instruments.*
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" *551. Written instruments completed but not delivered.*
" *552. Severing and removing part of the realty.*
" *553. Larceny and receiving stolen property out of the State.*
" *554. Conversion by trustee, larceny.*
" *555. Verbal false pretense, not larceny.*
" *556. Claim of title, ground of defense.*
" *557. Stealing gas.*
" *558. Stealing water.*
" *559. Receiver of stolen property.*

SEC. 540. Every person who, with the intent to deprive or defraud the true owner of his property, or of the use and benefit thereof, or to appropriate the same to the use of the taker, or of any other person either—

1. Takes from the possession of the true owner, or of any other person; or obtains from such possession by color or aid of fraudulent or false representation or pretense, or of any false token or writing; or secretes, withholds or appropriates to his own use, or that of any other person other than the true owner, any money, personal property, thing in action, evidence of debt or contract, or article of value of any kind; or,

2. Having in his possession, custody or control, as a bailee, servant, attorney, agent, clerk, trustee or officer of any person, association or corporation; or as a public officer, or as a person authorized by agreement or by competent authority to hold, or take such possession, custody or control, any money, property, evidence of debt or contract, article of value of any nature, or thing in action or possession, appropriates the same to his own use, or that of any other person other than the true owner, or person entitled to the benefit thereof, steals such property and is guilty of larceny.

SEC. 541. Every person who willfully with intent to defraud by color or aid of a check or draft, or order for the payment of money, or the delivery of property when such person knows that the drawer or maker thereof is not entitled to draw on the drawee for the sum specified therein, or to order the payment of the amount or delivery of the property, although no express representation is made in reference thereto, obtains from another any money or property, is guilty of larceny.

SEC. 542. Larceny is divided into two degrees, the first of which is termed grand larceny, the second petit larceny.

SEC. 543. Grand larceny is larceny committed in either of the following cases:

1. When the property taken is of a value exceeding fifty dollars.

2. When the property taken is from the person of another.

SEC. 544. Larceny in other cases is petit larceny.

SEC. 545. Grand larceny is punishable by imprisonment in the state prison for not less than one nor more than fourteen years.

SEC. 546. Petit larceny is punishable by fine not exceeding five hundred dollars or by imprisonment in the county jail not exceeding six months, or both.

SEC. 547. Dogs are personal property, and their value is to be ascertained in the same manner as the value of other property.

SEC. 548. One who finds lost property under circumstances which give him knowledge of or means of inquiry as to the real owner and who appropriates such property to his own use or to the use of another person not entitled thereto, without first making reasonable and just efforts to find the owner and restore the property to him, is guilty of larceny.

SEC. 549. If the thing stolen consists of any evidence of debt or other written instrument the amount of money due thereon or secured to be paid thereby and remaining unsatisfied, or which in any contingency might be collected thereon, or the value of the property, the title to which is shown thereby, or the sum which might be recovered in the absence thereof, is the value of the thing stolen.

SEC. 550. If the thing stolen is any ticket or other paper or writing entitling or purporting to entitle the holder or proprietor thereof to a passage upon any railroad or vessel, or other public conveyance, the price at which tickets entitling a person to a like passage are usually sold by the proprietors of such conveyance is the value of such ticket, paper or writing.

SEC. 551. All the provisions of this chapter apply where the property taken is an instrument for the payment of money, evidence of debt, public security or passage ticket, completed and ready to be issued or delivered, although the same has never been issued or delivered by the makers thereof to any person as a purchaser or owner.

SEC. 552. The provisions of this chapter apply where the thing taken is a fixture or part of the realty, and is severed at the time of the taking, in the same manner as if the thing had been severed by another person at some previous time.

SEC. 553. Every person who, in another State or country, steals the property of another, or receives such property knowing it to have been stolen, and brings the same into this State, may be convicted and punished in the same manner as if such larceny or receiving had been committed in this State.

SEC. 554. Every person acting as executor, administrator, guardian, receiver, the officer of any bank or corporation, or trustee of any description appointed by a deed, will or other instrument, or by an order or judgment of a court, judge or officer, who secretes, withholds or otherwise appropriates to his own use, or that of any person other than the true owner, or person entitled thereto, any money, goods, thing in action, security, evidence of debt or property, or other valuable thing, or any proceeds thereof, in his possession or custody, by virtue of his office, employment or appointment, is guilty of larceny in such degree as is herein prescribed with reference to the value of such property.

SEC. 555. A purchase of property by means of false pretense is not criminal where the false pretense relates to the purchaser's means or ability to pay, unless the pretense is made in writing and signed by the party to be charged.

SEC. 556. Upon an indictment, information or complaint for larceny it is a sufficient defense that the property was appropriated openly and avowedly under a claim of title preferred in good faith, even though such claim is untenable. The fact that the defendant intended to restore the property taken is no ground of defense if it has not been restored before complaint, to a magistrate or court, charging the commission of the offense, has been made.

SEC. 557. Every person who, with intent to injure or defraud, makes or causes to be made any pipe, tube or other instrument, and connects the same or causes it to be connected with any main service-pipe, or other pipe for conducting or supplying illuminating gas, in such manner as to supply illuminating gas to any burner or orifice, by or at which illuminating gas is consumed, around or without passing through the meter provided for the measuring and registering the quantity consumed, or in any other manner so as to evade payment therefor, and every person who, with like intent, injures or alters any gas meter or obstructs its action, is guilty of a misdemeanor.

SEC. 558. Every person who with intent to injure or defraud connects or causes to be connected any pipe, tube or other instrument with any main, service pipe, or other pipe or conduit or flume for conducting water for the purpose of taking water from such main, service pipe, conduit or flume without the knowledge of the owner thereof and with intent to evade payment therefor, is guilty of a misdemeanor.

SEC. 559. Every person who for his own gain or to prevent the owner from again possessing his own property buys or receives any personal property, knowing the same to have been stolen, is punishable by imprisonment in the state prison not exceeding five years or in a county jail not exceeding six months; and it is presumptive evidence that such property was stolen if the same consists of jewelry, silver or plated ware or articles of personal ornament, if purchased or received from a person under the age of eighteen unless said property is sold by said minor at a fixed place of business carried on by minor or his employer.

CHAPTER VI.

EXTORTION.

Section 563. Extortion defined.
" *564. What threats constitute extortion.*
" *565. Punishment of extortion in certain cases.*
" *566. Obtaining signature by means of threats.*
" *567. Compulsion to execute instrument.*
" *568. Oppression committed under color of official right.*
" *569. Extortion committed under color of official right.*
" *570. Punishment of extortion committed under color official right.*
" *571. Blackmail.*
" *572. Written threats.*
" *573. Verbal threats.*
" *574. Unlawful threat referring to act of third person.*
" *575. Employe of railrord company taking more fare, etc.*
" *576. Requiring release of liability, etc.*

SEC. 563. Extortion is the obtaining property from another with his consent induced by wrongful use of force or fear or under color of official right.

SEC. 564. Fear, such as will constitute extortion, may be induced by a threat either—

1. To do an unlawful injury to the person or property of the individual threatened, or to any relative of his or member of his family; or,

2. To accuse him or any relative or member of his family of any crime; or,

3. To expose or impute to them or him any deformity or disgrace; or,

4. To expose any secret affecting him or them.

SEC. 565. Every person who extorts money or other property from another under circumstances not amounting to robbery by means of force or any threat such as is mentioned in the preceding section is punishable by imprisonment in the state prison not exceeding five years.

SEC. 566. Every person who by any extortionate means obtains from another his signature to any paper or instrument whereby, if such signature were freely given, any property would be transferred or any debt, demand, charge, or right of action created, is punishable in the same manner as if the actual delivery of such debt, demand, charge, or right of action were obtained.

SEC. 567. The compelling or inducing another by force or threat to make, subscribe, seal, execute, alter or destroy any valuable security or instrument, or writing affecting or intended to affect any cause of action or defense or any property is extortion under the provisions of the three preceding sections.

SEC. 568, Every public officer or person pretending to be such who unlawfully and maliciously, under pretense or color of official authority—

1. Arrests another or detains him against his will; or,
2. Seizes or levies upon another's property; or,
3. Dispossesses another of any lands or tenements; or,
4. Does any other act whereby another person is injured in his person, property or rights, is guilty of a misdemeanor.

SEC. 569. Every public officer who asks or receives or agrees to receive a fee or other compensation for his official services, either:

1. In excess of the fee or compensation allowed to him by statute therefor; or,
2. Where no fee or compensation is allowed to him by statute therefor;

Is guilty of a misdemeanor.

SEC. 570. Every person who commits any extortion under color of official right, in cases for which a different punishment is not prescribed by this Code, is guilty of a misdemeanor.

SEC. 571. Every person who, knowing the contents thereof, and with intent by means thereof, to extort or gain any money or other property, or to do, abet or procure any illegal or wrongful act, sends, delivers or in any manner causes to be forwarded or received, or makes or parts with for the purpose that there may be sent or delivered, any letter or writing whether subscribed or not, threatening:

1. To accuse any person of crime; or,
2. To do any injury to any person or to any property; or,
3. To publish or connive at publishing any libel; or,
4. To expose or impute to any person any deformity or disgrace; or,
5. To expose any secret affecting any person;

Is punishable by imprisonment in the state prison, not exceeding five years, or by fine not exceeding five thousand dollars, or both.

SEC. 572. Every person who, knowing the contents thereof, sends, delivers, or in any manner causes to be sent or received any letter or other writing, whether subscribed or not, threatening to do an unlawful injury to the person or property of another, is guilty of a misdemeanor.

SEC. 573. Every person who, under circumstances not amounting to robbery or an attempt at robbery, with intent to gain or extort any money or other property, verbally makes such a threat as would be criminal under either of the preceding sections of this chapter if made or communicated in writing, is guilty of a misdemeanor.

SEC. 574. It is immaterial whether a threat made as specified in this chapter is of things to be done or omitted by the offender or by any other person.

SEC. 575. Every officer, agent or employe of a railroad company, who asks or receives a greater sum than is allowed by law for the carriage of passengers or freight, is guilty of a misdemeanor.

SEC. 576. Every person, company or corporation, which requires of its servants or employes, as a condition of their employment or otherwise, any contract or agreement whereby such person, company or corporation, is released or discharged from liability or responsibility on account of personal injuries received by such servants or employes, while in the service of such person, company or corporation, by reason of the negligence of such person, company or corporation, or the agents or employes thereof, is punishable by imprisonment in the state prison not exceeding five years, or by a fine not exceeding five thousand dollars, or both.

CHAPTER VII.

FALSE PERSONATION AND CHEATS.

Section 580. Marrying under false personation.
" *581. Falsely personating another in other cases.*
" *582. Receiving property in a false character.*
" *583. Obtaining money by false pretenses.*
" *584. Confidence games.*
" *585. Selling land twice.*
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" *587. Mock auction.*
" *588. Consignee, false statement by.*
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" *590. False pedigree of animals, etc.*
" *591. Selling animal with false pedigree.*
" *592. Use of false pretenses in selling mines.*
" *593. Interference with samples for assay.*
" *594. Making false samples of ore.*

SEC. 580. Every person who falsely personates another, and in such assumed character marries or pretends to marry, or to

sustain the marriage relation towards another, with or without connivance of such other, is guilty of a felony.

SEC. 581. Every person who falsely personates another, and in such assumed character, either:

1. Becomes bail or surety for any party in any proceeding whatever, before any court or officer authorized to take such bail or surety; or,

2. Verifies, publishes, acknowledges, or proves in the name of another person, any written instrument, with intent that the same may be recorded, delivered and used as true; or,

3. Does any other act whereby, if it were done by the person falsely personated, he might, in any event, become liable to any suit or prosecution, or to pay any sum of money, or to incur any charge, forfeiture, or penalty, or whereby any benefit might accrue to the party personating, or to any other person; or,

4. Confesses a judgment,

Is punishable by imprisonment in the State prison not exceeding five years, or by a fine not exceeding five thousand dollars, or both.

SEC. 582. Every person who falsely personates another, and in such assumed character receives any money or property, knowing that it is intended to be delivered to the individual so personated, with intent to convert the same to his own use, or to that of another person, or to deprive the true owner thereof, is punishable in the same manner and to the same extent as for larceny of the money or property so received.

SEC. 583. Every person who knowingly and designedly, by false or fraudulent representation or pretenses, defrauds any other person of money or property, or who causes or procures others to report falsely of his wealth or mercantile character, and by thus imposing upon any person obtains credit, and thereby fraudulently gets into possession of money or property, is punishable in the same manner and to the same extent as for larceny of the money or property so obtained.

SEC. 584. Every person who obtains or attempts to obtain from another any money or property, by means or use of brace faro, or any false or worthless checks, or by any other means, artifice, device, instrument or pretense, commonly called confidence games or bunco, is punishable by imprisonment in the State prison not exceeding ten years.

SEC. 585. Every person who, after once selling, bartering or disposing of any tract of land or town lot, or after executing any bond or agreement for the sale of any land or town lot, again willfully and with intent to defraud previous or subsequent purchasers, sells, barters or disposes of the same tract of land or town lot, or any part thereof, or willfully and with intent to defraud previous or subsequent purchasers, executes any bond or agreement to sell, barter or dispose of the same land or lot, or any part thereof, to any other person for a valuable consideration, is punishable by imprisonment in the State prison not less than one nor more than ten years.

SEC. 586. Every person who falsely represents himself or herself as competent to sell or mortgage any real estate, to the validity of which sale or mortgage the assent or concurrence of his wife or her husband is necessary, and under such representation willfully conveys or mortgages the same, is guilty of a felony.

SEC. 587. Every person who obtains any money or property from another, or obtains the signature of another to any written instrument, the false making of which would be forgery, by means of any false or fraudulent sale of property or pretended property, by auction, or by any of the practices known as mock auctions, is punishable by imprisonment in the State prison not exceeding three years, or in the county jail not exceeding one year, or by fine not exceeding one thousand dollars, or by both fine and imprisonment; and in addition thereto, forfeits any license he may hold as auctioneer, and is forever disqualified from receiving a license to act as auctioneer within this State.

SEC. 588. Every commission merchant, broker, agent, factor or consignee who shall willfully and corruptly make or cause to be made to the principal or consignor of such commission merchant, agent, broker, factor or consignee a false statement concerning the price obtained for or the quality or quantity of any property consigned or intrusted to such commission merchant, agent, broker, factor or consignee for sale, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by fine not exceeding five hundred dollars or imprisonment in the county jail not exceeding six months, or both.

SEC. 589. Every person who, after mortgaging any personal property, except locomotives, engines, rolling stock of a railroad, steamboat machinery in actual use and vessels, voluntarily removes or permits the removal of the mortgaged property from the place where it was situated at the time it was mortgaged without the written consent of the mortgagee, with intent to deprive the mortgagee of his interest therein, is guilty of a misdemeanor.

SEC. 590. Every person who makes, publishes, delivers or uses any false or fraudulent pedigree of any horse, cattle, sheep or other domestic animal for the purpose of increasing the value of the animal is punishable by a fine not exceeding five hundred dollars.

SEC. 591. Every person who by statements or representations concerning a false or fraudulent pedigree sells to another any domestic animal and such animal is not of the breeding or pedigree as represented, is punishable by a fine not exceeding fifty dollars, and is liable to the purchaser in a civil action for double the value or price paid for the animal.

SEC. 592. Every person who, with intent to cheat, wrong, or defraud, places in or upon any mine or mining claim any ores or specimens of ores not extracted therefrom, or exhibits any ore, or certificate of assay of ore not extracted therefrom, for the purpose of selling any mine or mining claim, or interest therein, or who obtains any money or property by any such false pretenses or artifices, is guilty of a felony.

SEC. 593. Every person who interferes with, or in any manner changes samples of ores or bullion produced for sampling, or changes or alters samples or packages of ores or bullion which have been purchased for assaying, or who shall change or alter any certificate of sampling or assaying, with intent to cheat, wrong, or defraud, is guilty of a felony.

SEC. 594. Every person who, with intent to cheat, wrong, or defraud, makes or publishes a false sample of ore or bullion, or who makes or publishes, or causes to be published a false assay of ore or bullion, is guilty of a felony.

CHAPTER VIII.

FRAUDULENT DESTRUCTION OF PROPERTY INSURED.

Section 595. Burning or destroying property insured.
" 596. Presenting false proofs upon policy of insurance.

SEC. 595. Every person who willfully burns or in any other manner injures or destroys any property which is at the time insured against loss or damage by fire or by any other casualty, with intent to defraud or prejudice the insurer, whether the same be the property of or in possession of such person, or of any other, is punishable by imprisonment in the State prison not less than one nor more than ten years.

SEC. 596. Every person who presents or causes to be presented any false or fraudulent claim, or any proof in support of such claim, upon any contract of insurance for the payment of any loss, or who prepares, makes, or subscribes any account, certificate of survey, affidavit, or proof of loss, or other book, paper or writing, with intent to present or use the same, or allow it to be presented or used in support of any such claim, is punishable by imprisonment in the State prison not exceeding three years, or by fine not exceeding one thousand dollars, or both.

CHAPTER IX.

FALSE WEIGHTS AND MEASURES.

Section 599. "False weight" and "measure" defined.
" 600. Using false weights or measures.
" 601. Stamping false weight, etc., on casks or packages.
" 602. Weight by the ton or pound.

SEC. 599. A false weight or measure is one which does not conform to the standard established by the laws of the United States of America.

SEC. 600. Every person who uses any weight or measure, knowing it to be false, by which use another is defrauded or otherwise injured, is guilty of a misdemeanor.

SEC. 601. Every person who knowingly marks or stamps false or short weight or measure, or false tare, on any cask or package, or knowingly sells or offers for sale, any cask or package so marked, is guilty of a misdemeanor.

SEC. 602. In all sales of coal, hay, and other commodities, usually sold by the ton or fractional parts thereof, the seller must give to the purchaser full weight, at the rate of two thousand pounds to the ton; and in all sales of articles which are sold in commerce by avoirdupois weight, the seller must give to the purchaser full weight, at the rate of sixteen ounces to the pound; and any person violating this section is guilty of a misdemeanor.

CHAPTER X.

FRAUDULENT CONVEYANCES.

Section 606. Fraudulent Conveyances.
" *607. Fraudulent removal of property to prevent levy.*
" *608. Knowingly receiving property.*
" *609. Concealment of the effects of insolvent debtor.*

SEC. 606. Every person who is a party to any fraudulent conveyance of any lands, tenements, or hereditaments, goods or chattels or any right or interest issuing out of the same, or to any bond, suit, judgment or execution, contract or conveyance, had made, or contrived, with intent to deceive and defraud others, or to defeat, hinder or delay creditors or others of their just debts, damages or demands; or who, being a party as aforesaid, at any time wittingly and willingly puts in, uses, avows, maintains, justifies or defends the same, or any of them, as true and done, had or made in good faith, or upon good consideration, or aliens, assigns or sells any of the lands, tenements or hereditaments, goods, chattels or other things before mentioned, to him or them conveyed as aforesaid, or any part thereof, is guilty of a misdeameanor.

SEC. 607. Every person who, with intent to defraud a creditor, or to prevent any of his property from being made liable for the payment of any of his debts, or from being levied upon by writ of execution or attachment, removes any of his property or secretes, assigns, conveys or otherwise disposes of the same, is guilty of a misdemeanor.

SEC. 608. Every person, who receives any property from another, knowing that the same is transferred or delivered to him in violation of or with intent to violate the last section, is guilty of a misdemeanor.

SEC. 609. Every person who makes a general assignment of his property for the payment of his debts and willfully conceals any part of his estate or effects, or any book account or any writing relating thereto, or any debt owing him by any person, or who represents in his list of creditors any person to whom he is not indebted, or does any act contrary to the provisions of Title III., Part II., Division IV., of the Civil Code, is guilty of a misdemeanor.

CHAPTER XI.

FRAUDULENT INSOLVENCIES BY CORPORATIONS, AND OTHER FRAUDS IN THEIR MANAGEMENT.

Section 612. Frauds in subscriptions for stock of corporations.
" *613. Fraudulent issue of stock, scrip, etc.*
" *614. Frauds in procuring organization, etc., of corporation.*
" *615. Unauthorized use of names in prospectus, etc.*
" *616. Misconduct of directors of stock corporations.*
" *617. Savings-bank officer overdrawing his account.*
" *618. Receiving deposits in insolvent banks.*
" *619. Frauds in keeping accounts in books of corporation.*
" *620. Officer of corporation publishing false reports.*
" *621. Officer of corporation to permit an inspection.*
" *622. Officer of railroad company contracting debt in its behalf exceeding its available means.*
" *623. Debt contracted in violation of the last section not invalid.*
" *624. Director of a corporation presumed to have knowledge of its affairs.*
" *625. Director present at meeting, when presumed to have assented to proceedings.*
" *626. Director absent from meeting, when presumed to have assented to proceedings.*
" *627. Foreign corporations.*
" *628. Same.*
" *629. Agent of foreign corporation.*
" *630. Corporation not complying with laws.*
" *631. Agent of corporation.*
" *632. "Director" defined.*

SEC. 612. Every person who signs the name of a fictitious person to any subscription for, or an agreement to take, stock in any corporation existing or proposed, and every person who signs to any subscription or agreement the name of any person, knowing that such person has not means or does not intend in good faith to comply with all the terms thereof, or under any understanding or agreement that the terms of such subscription or agreement are not to be complied with or enforced, is guilty of a misdemeanor.

SEC. 613. Every officer, agent or other person in the service of any joint stock company or corporation formed or existing under the laws of this State, or of the United States, or of any state or territory thereof, or of any foreign government or country, who willfully and knowingly, with intent to defraud, either—

1. Sells, pledges or issues, or causes to be sold, pledged or issued, signs or executes, or causes to be signed or executed, with intent to sell, pledge or issue, or cause to be sold, pledged or issued, any certificate or instrument purporting to be a certificate or evidence of the ownership of any share or shares of such company or corporation, or any bond or evidence of debt, or writing purporting to be a bond or evidence of debt of such company or corporation, without being first thereto duly authorized by such company or corporation or contrary to the charter or laws under which said company or corporation exists, or in excess of the power of such company or corporation, or of the limit imposed by law, or otherwise, upon its power to create or issue stock or evidence of debt; or,

2. Re-issues, sells, pledges or disposes of, or causes to be re-issued, sold, pledged or disposed of, any surrendered or canceled certificates, or other evidence of the transfer, or ownership of any such share or shares, is punishable by imprisonment in the State prison not exceeding seven years, or by a fine not exceeding three thousand dollars, or both.

SEC. 614. Every officer, agent or clerk of any corporation, or of any persons proposing to organize a corporation, or to increase the capital stock of any corporation, who knowingly exhibits any false, forged or altered book, paper, voucher, security or other instrument of evidence, to any public officer or board authorized by law to examine the organization of such corporation, or to investigate its affairs, or to allow an increase of its capital, with intent to deceive such officer or board in respect thereto, is punishable by imprisonment in the State prison not less than three nor more than ten years.

SEC. 615. Every person who, without being authorized so to do, subscribes the name of another to, or inserts the name of another in, any prospectus, circular or other advertisement or announcement of any corporation or joint stock association, existing or intended to be formed, with intent to permit the same to be published, and thereby to lead persons to believe that the person whose name is so subscribed is an officer, agent, member or promoter of such corporation or association, is guilty of a misdemeanor.

SEC. 616. Every director of any stock corporation who concurs in any vote or act of the directors of such corporation or any of them, by which it is intended, either—

1. To make any dividend, except from the surplus profits arising from the business of the corporation, and in the cases and manner allowed by law; or,

2. To divide, withdraw or in any manner, except as provided by law, pay to the stockholders, or any of them, any part of the capital stock of the corporation; or,

3. To discount or receive any evidence of debt in payment of any installment actually called in and required to be paid, or with the intent to provide the means of making such payments; or,

4. To receive or discount any note or other evidence of debt, with the intent to enable any stockholder to withdraw any part of the money paid in by him, or his stock; or,

5. To receive from any other stock corporation, in exchange for the shares, notes, bonds or other evidences of debt of their own corporation, shares of the capital stock of such other corporation, or notes, bonds or other evidences of debt issued by such other corporation, is guilty of a misdemeanor.

SEC. 617. Every officer, teller, or clerk of any savings bank, who knowingly overdraws his account with such bank, and thereby wrongfully obtains the money, note or funds of such bank, is guilty of a misdemeanor.

SEC. 618. Every officer, agent, teller or clerk of any bank, and every individual banker or agent, teller or clerk of any individual banker, who receives any deposits, knowing that such bank or association or banker is insolvent, is guilty of a felony.

SEC. 619. Every officer, director or agent of any corporation or joint stock association, who knowingly receives or possesses himself of any property of such corporation or association, otherwise than in payment of a just demand, and who, with intent to defraud, omits to make, or to cause or to direct to be made, a full and true entry thereof in the books or accounts of such corporation or association, and every director, officer, agent or member of any corporation or joint stock association who, with intent to defraud, destroys, alters, mutilates or falsifies any of the books, papers, writings, or securities belonging to such corporation or association, or makes, or concurs in making any false entries, or omits, or concurs in omitting to make any material entry in any book of accounts or other record or document kept by such corporation or association, is punishable by imprisonment in the state prison not less than three nor more than ten years, or by imprisonment in the county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both imprisonment and fine.

SEC. 620. Every director, officer, or agent of any corporation or joint stock association, who knowingly concurs in making, publishing or posting any written report, exhibit, or statement of its affairs or pecuniary condition, or book or notice containing any material statement which is false, or refuses to make any book or post any notice required by law, in the manner required by law, other than such as are mentioned in this chapter, is guilty of a felony.

SEC. 621. Every officer or agent of any corporation, having or keeping an office within this State, who has in his custody or control any book, paper, or document of such corporation, and who refuses to give to a stockholder or member of such corporation, lawfully demanding, during office hours, to inspect or take a copy of the same, or of any part thereof, a reasonable opportunity so to do, is guilty of a misdemeanor.

SEC. 622. Every officer, agent, or stockholder of any railroad company, who knowingly assents to, or has any agency in contracting any debt by or on behalf of such company, unauthorized by a special law for the purpose, the amount of which debt, with other debts of the company, exceeds its available means for the payment of its debts, in its possession, under its control, and belonging to it at the time such debt is contracted, including its bona fide and available stock subscriptions, and inclusive of its real estate, is guilty of a misdemeanor.

SEC. 623. The last section does not affect the validity of a debt created in violation of its provisions, as against the company.

SEC. 624. Every director of a corporation or joint stock association is deemed to possess such a knowledge of the affairs of his corporation as to enable him to determine whether any act, proceeding or omission of its directors is a violation of this chapter.

SEC. 625. Every director of a corporation or joint stock association who is present at a meeting of the directors at which any act, proceeding, or omission of such directors in violation of this chapter occurs, is deemed to have concurred therein unless he at the time causes or in writing requires his dissent therefrom to be entered in the minutes of the directors.

SEC. 626. Every director of a corporation or joint stock association, although not present at a meeting of the directors at which any act, proceeding or omission of such directors in violation of this chapter occurs, is deemed to have concurred therein if the facts constituting such violation appear on the records or proceedings of the board of directors and he remains a director of the same company for six months thereafter and does not within that time cause or in writing require his dissent from such illegality to be entered in the minutes of the directors.

SEC. 627. It is no defense to a prosecution for a violation of the provisions of this chapter that the corporation was one created by the laws of another State, government or country, if it was one carrying on business or keeping an office therefor within this State.

SEC. 628. Every foreign corporation doing business in this State contrary to the provisions of Title XII., Part IV., Division 1, of the Civil Code, is guilty of a misdemeanor.

SEC. 629. Every person who acts as agent or in any other capacity for a foreign corporation, who has not complied with the provisions of law relating to foreign corporations, is guilty of a misdemeanor.

SEC. 630. Every corporation which fails to comply with the provisions of law relating to corporations, as prescribed in the Civil Code, is guilty of a misdemeanor.

SEC. 631. Every person who acts as an officer, agent or in any other capacity for a corporation which has not complied with the provisions of law as prescribed in the Civil Code is guilty of a misdemeanor.

SEC. 632. The term "director" as used in this chapter embraces any of the persons having by law the direction or management of the affairs of a corporation, by whatever name such persons are described in its charter or known by law.

CHAPTER XII.

FRAUDULENT ISSUE OF DOCUMENTS OF TITLE TO MERCHANDISE.

Section 636. Issuing fictitious bills of lading, etc.
" *637. Issuing fictitious warehouse receipts.*
" *638. Erroneous bills of lading or receipts issued in good faith.*
" *639. Duplicate receipts must be marked "duplicate."*
" *640. Selling, etc., property received for transportation or storage.*

SEC. 636. Every person being the master, owner, or agent of any vessel, or officer or agent of any railroad, express or transportation company, or otherwise being or representing any carrier, who delivers any bill of lading, receipt, or other voucher, by which it appears that any merchandise of any description has been shipped on board any vessel, or delivered to any railroad, express, or transportation company, or other carrier, unless the same has been so shipped or delivered, and is at the time actually under the control of such carrier, or the master, owner, or agent of such vessel, or of some officer or agent of such company, to be forwarded as expressed in such bill of lading, receipt, or voucher, is punishable by imprisonment in the State prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both.

SEC. 637. Every person carrying on the business of a warehouseman, wharfinger, or other depositary of property, who issues any receipt, bill of lading, or other voucher for any merchandise of any description, which has not been actually received upon the premises of such person, and is not under his actual control at the time of issuing such instrument, whether such instrument is issued to a person as being the owner of such merchandise, or as security for any indebtedness, is punishable by imprisonment in the State prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both.

SEC. 638. No person can be convicted of any offense under the last two sections by reason that the contents of any barrel, box, cask, or other vessel or package mentioned in the bill of lading, receipt, or other voucher, did not correspond with the description given in such instrument of the merchandise received, if such description corresponded substantially with the marks, labels, or brands upon the outside of such vessel, or package, unless it appears that the accused knew such marks, labels, or brands were untrue.

SEC. 639. Every person mentioned in this chapter, who issues any second or duplicate receipt or voucher, of a kind specified therein, at a time while any former receipt or voucher for the merchandise specified in such second receipt is outstanding and uncanceled, without writing across the face of the same the word "duplicate" in a plain and legible manner, is punishable by imprisonment in the State prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both.

SEC. 640. Every person mentioned in this chapter who sells, hypothecates or pledges any merchandise for which any bill of lading, receipt, or voucher has been issued by him, without the consent in writing thereto of the person holding such bill, receipt, or voucher, is punishable by imprisonment in the State prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both. The provisions of this section do not apply where the property is demanded or sold under process of law.

CHAPTER XIII.

MALICIOUS INJURIES TO RAILROAD BRIDGES, HIGHWAYS, BRIDGES, TELEGRAPHS, DITCHES, ETC.

Section 643. Injuries to railroads and railroad bridges.
" *644. Injuries to highways, private ways, and bridges.*
" *645. Injuries to milestones and guideboards.*
" *646. Injuring telegraph lines.*
" *647. Taking water from or obstructing canals.*

SEC. 643. Every person who maliciously, either—

1. Removes, displaces, injures or destroys any part of any railroad, whether for cars propelled by steam or any motive power, or any track of any railroad, or any branch or branchway, turnout, bridge, viaduct, culvert, embankment, station-

house or other structure or fixture, or any part thereof, attached or connected with any railroad; or,

2. Places any obstruction upon the rails or track of any railroad, of any switch, branch, branch-way or turnout connected with any railroad,

Is punishable by imprisonment in the State prison not exceeding five years, or in the county jail not less than six months.

SEC. 644. Every person who maliciously digs up, removes, displaces, breaks or otherwise injures or destroys any public highway, or any private way laid out by authority of law, or bridge upon such highway or private way, is punishable by imprisonment in the State prison not exceeding five years, or in the county jail not exceeding one year, or by fine not exceeding one thousand dollars, or by both such imprisonment and fine.

SEC. 645. Every person who maliciously removes or injures any mile-board, post or stone, or guide-post or any inscription on such, erected upon any highway, is guilty of a misdemeanor.

SEC. 646. Every person who maliciously takes down, removes, injures or obstructs any line of telegraph, telephone or electric light, or any part thereof, or appurtenance or apparatus connected therewith, or severs any wire thereof, is guilty of a misdemeanor.

SEC. 647. Every person who shall, without authority of the owner or managing agent, and with intent to defraud, take water from any canal, ditch, flume or reservoir, used for the purpose of holding or conveying water for manufacturing, agricultural, mining or domestic uses, or who, without like authority, shall raise, lower or otherwise disturb any gate or other appurtenance thereof used for the control or the measurement of water, or who shall empty or place, or cause to be emptied or placed into any such canal, ditch, flume or reservoir, any rubbish, filth or obstruction to the free flow of the water, is guilty of a misdemeanor.

TITLE XIV.

MALICIOUS MISCHIEF.

Section 655. Malicious mischief in general defined.
" *656. Specifications in following section not restrictive*
" *657. Burning buildings, etc., not the subject of arson.*
" *658. Using gunpowder, etc., in destroying or injuring any buildings.*
" *659. Malicious injuries to freehold.*
" *660. Injuries to standing crops, etc.*
" *661. Removing, defacing, or altering landmarks.*
" *662. Destroying or injuring jails.*
" *663. Destroying or injuring dams, etc.*

Section 664. Burning or injuring rafts, setting adrift vessels.
“ *665. Obstructing navigable rivers.*
“ *666. Injuries to United States surveyors' monuments.*
“ *667. Destroying or tearing down notices.*
“ *668. Injuring or destroying written instrument.*
“ *669. Opening or publishing sealed letters.*
“ *670. Disclosing contents of telegraphic message.*
“ *671. Altering telegraphic messages.*
“ *672. Opening telegrams.*
“ *673. Injuring works of art or improvements.*
“ *674. Destroying works of literature, etc., in public libraries.*
“ *675. Breaking or obstructing water pipes, etc.*
“ *676. Setting fire to timber, etc., negligently.*
“ *677. Setting fire to timber, etc., maliciously.*
“ *678. Exposing infected clothing.*
“ *679. Driving animals on sidewalk.*
“ *680. Defacing public buildings.*
“ *681. Injury to trees on public lands.*

SEC. 655. Every person who maliciously injures or destroys any real or personal property not his own, in cases otherwise than such as are specified in this code, is guilty of a misdemeanor.

SEC. 656. The specification of the acts enumerated in the following sections of this chapter is not intended to restrict or qualify the interpretation of the preceding section.

SEC. 657. Every person who willfully and maliciously burns any bridge exceeding fifty dollars in value, or any building, snow-shed or vessel not the subject of arson, or any stack of grain of any kind, or of hay, or any growing or standing grain, grass or tree, or any fence not the property of such person, is punishable by imprisonment in the state prison for not less than one nor more than ten years.

SEC. 658. Every person who maliciously, by the explosion of gunpowder or other explosive substance, destroys, throws down or injures the whole or any part of any building, by means of which the life or safety of a human being is endangered, is guilty of a felony.

SEC. 659. Every person who willfully commits any trespass, by either—

1. Cutting down, destroying or injuring any kind of wood or timber standing or growing upon the lands of another; or,

2. Carrying away any kind of timber or wood lying on such lands; or,

3. Maliciously injuring or severing from the freehold of another anything attached thereto or the produce thereof; or,

4. Digging, taking or carrying away from any lot situated

within the limits of any incorporated city, without the license of the owner or legal occupant thereof, any earth, soil or stone; or,

5. Digging, taking or carrying away from any land in any of the cities of the state, laid down on the map or plan of such city, or otherwise recognized or established as a street, alley, avenue or park, without the license of the proper authorities, any earth, soil, or stone; or.

6. Putting up, fastening, printing, or painting upon any property belonging to the state, or to any city, county, town, or village, or dedicated to the public, or upon any property of any person, without license of the owner, any notice, advertisement or designation of, or any name of any commodity, whether for sale or otherwise, or any picture, sign, or device intended to call attention thereto;

Is guilty of a misdemeanor.

SEC. 660. Every person who maliciously injures or destroys any standing crops, grain, cultivated fruits or vegetables, the property of another, in any case for which a punishment is not prescribed by this Code, is guilty of a misdemeanor.

SEC. 661. Every person who either:

1. Maliciously removes any monument erected for the purpose of designating any point in the boundary of any lot or tract of land; or,

2. Willfully or maliciously defaces or alters the marks upon any such monument; or,

3. Maliciously cuts down or removes any tree upon which any such marks have been made for such purpose, with intent to destroy such marks;

Is guilty of a misdemeanor.

SEC. 662. Every person who willfully and intentionally breaks down, pulls down, or otherwise destroys or injures any public jail or other place of confinement, is punishable by fine not exceeding ten thousand dollars, or by imprisonment in the state prison not exceeding five years.

SEC. 663. Every person who willfully and maliciously cuts, breaks, injures or destroys any bridge, dam, canal, flume, aqueduct, levee, embankment, reservoir or other structure erected to create hydraulic power, or to store or to conduct water for mining, manufacturing, or agricultural purposes, or for the supply of the inhabitants of any city or town, or any embankment necessary to the same, or either of them, or willfully or maliciously makes or causes to be made, any aperture in such dam, canal, flume, aqueduct, reservoir, embankment, levee, or structure, with intent to injure or destroy the same, is punishable by a fine not less than one hundred dollars, or by imprisonment in the county jail not exceeding two years, or both.

SEC. 664. Every person who willfully and maliciously burns, injures or destroys any pile or raft of wood, plank boards, or other lumber, or any part thereof, or cuts loose or sets adrift any such raft or part thereof, or cuts, breaks, injures, sinks, or sets adrift any vessel or boat the property of another, is punishable by fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding six months, or both.

SEC. 665. Every person who unlawfully obstructs the navigation of any navigable stream, is guilty of a misdemeanor.

SEC. 666. Every person who willfully injures, defaces or removes any monument erected, or marked, or used by the surveyors of the United States to designate a point or corner in a survey under authority of the United States is guilty of a misdemeanor.

SEC. 667. Every person who intentionally—

1. Defaces, obliterates, tears down, or destroys any copy or transcript or extract from or of any law of the United States or of this State, or any proclamation, advertisement or notification set up at any place in this State by authority of any law of the United States or of this State, or by order of any court, before the expiration of the time for which the same was to remain set up, or

2. Defaces, obliterates, tears or destroys any notice placed or posted on a mining claim, or removes or destroys any stake or monument placed thereon to identify it,

Is punishable by imprisonment in the county jail not exceeding three months or by a fine not exceeding one hundred dollars, or both.

SEC. 668. Every person who maliciously mutilates, tears, defaces, obliterates or destroys any written instrument the property of another, the false making of which would be forgery, is punishable by imprisonment in the state prison not less than one nor more than five years.

SEC. 669. Every person who willfully opens, or reads, or causes to be read any sealed letter not addressed to himself without being authorized so to do either by the writer of such letter or by the person to whom it is addressed, and every person who, without the like authority, publishes any of the contents of such letter, knowing the same to have been unlawfully opened, is guilty of a misdemeanor.

SEC. 670. Every person who willfully discloses the contents of a telegraphic message, or any part thereof, addressed to another person without the permission of such person, unless directed so to do by the lawful order of a court, is punishable by imprisonment in the State prison not exceeding five years, or in the county jail not exceeding one year, or by fine not exceeding five thousand dollars, or by both fine and imprisonment.

SEC. 671. Every person who willfully alters the purport, effect, or meaning of a telegraphic message to the injury of another, is punishable as provided in the preceding section.

SEC. 672. Every person not connected with any telegraph office who, without the authority or the consent of the person to whom the same may be directed, willfully opens any sealed envelope inclosing a telegraphic message and addressed to another person, with the purpose of learning the contents of such message, or who fraudulently represents another person and thereby procures to be delivered to himself any telegraphic message addressed to such other person, with the intent to use, destroy, or detain the same from the person or persons entitled to receive such message, is punishable as provided in Section 670.

SEC. 673. Every person, not the owner thereof, who willfully injures, disfigures, or destroys any monument, work of art, or useful or ornamental improvement within the limits of any village, town or city, or any shade tree or ornamental plant growing therein, whether sittuated upon private ground or on any street, sidewalk, or public park or place, is guilty of a misdemeanor.

SEC. 674. Every person who maliciously cuts, tears, defaces, breaks, or injures any book, map, chart, picture, engraving, statue, coin, model, apparatus, or other work of literature, art or mechanics, or object of curiosity, deposited in any public library, gallery, museum, collection, fair, or exhibition, is guilty of felony.

SEC. 675. Every person who willfully breaks, digs up, obstructs, or injures any pipe or main for conducting gas or water, or any works erected for supplying buildings with gas or water, or any appurtenances or appendages therewith connected, is guilty of a misdemeanor.

SEC. 676. Every person who carelessly sets fire to any timber, woodland or grass, except for useful or necessary purposes, or who at any time makes a camp-fire, or lights a fire for any purposes whatever without taking sufficient steps to secure the same from spreading from the immediate locality where it is used, or fails to extinguish such fire before leaving it, is punishable by imprisonment in the county jail not exceeding one year, or by fine not exceeding two thousand dollars, or both.

SEC. 677. Every person who wantonly or designedly sets fire to any timber, woodland, or grass, or maliciously fails to extinguish a fire after making the same for a necessary purpose, before leaving it, is punishable by imprisonment in the state prison not exceeding five years, or by fine not exceeding five thousand dollars, or both.

SEC. 678. Every person who exposes any clothing or person infected with the smallpox, or other contagious disease, with intent to cause the spread of such disease, is punishable by imprisonment in the state prison not exceeding five years.

SEC. 679. Every person who, willfully and without authority, drives any team, vehicle or animal along or upon a sidewalk in a town or city, is punishable by imprisonment in the county jail not exceeding one month, or by a fine not exceeding fifty dollars, or both.

SEC. 680. Every person who willfully breaks, defaces or otherwise injures any church, schoolhouse or other public building, or any part thereof, or appurtenance thereto, or the windows or doors of the same, or any book, furniture, ornament or musical instrument or other chattel therein used, is guilty of a misdemeanor.

SEC. 681. Every person who commits a trespass on or any injury to any State lands or the improvements thereon, or who, without the proper authority, cuts, fells, girdles, injures or destroys any trees or timber upon any of the school, university or other State lands, or removes or attempts to remove the same, or knowingly purchases or receives such trees or timber, or advises the removal thereof, is guilty of a misdemeanor, and is also liable to the State for three times the value of said trees, or timber or lumber, into which the same are converted. All fines collected and all moneys recovered by virtue of this section must be paid into the school fund of the State.

CHAPTER XV.

CRUELTY TO ANIMALS.

Section 685. Over driving animals.
" *686. Abandonment of disabled animals.*
" *687. Failure to provide proper food and drink to impounded animals.*
" *688. Carrying an animal in a cruel manner.*
" *689. Poisoning animals.*
" *690. Keeping cows in unhealthy places.*
" *691. Promoting fights between animals.*

SEC. 685. Every person who overdrives or overloads, tortures or cruelly beats or unjustifiably injures, maims, mutilates or kills any animal, whether wild or tame, and whether belonging to himself or another, or deprives any animal of necessary food or drink, or neglects or refuses to furnish it such food or drink, or causes, procures or permits any animal to be overdriven, overloaded, tortured, cruelly beaten or unjustifiably injured, maimed, mutilated or killed, or to be deprived of necessary food or drink, or who willfully instigates or in any way engages in any act of cruelty to any animal, is guilty of a misdemeanor.

SEC. 686. Every person being the owner or in possession, or having charge or custody of a maimed, diseased, disabled or infirm animal, who abandons and leaves it to die in a street, highway or a public place is punishable by imprisoument not exceeding thirty days, or by a fine not exceeding fifty dollars, or both, and all necessary expenses incurred in taking care of said property shall be charged to such person.

SEC. 687. Every person who has impounded or confined any animal and refuses and neglects to supply such animal, during its confinement, with sufficient food, shelter and water, is punishable by imprisonment in the county jail not exceeding thirty days, or by a fine not exceeding one hundred dollars, or both.

SEC. 688. Every person who carries, or causes to be carried, in or upon any car, vessel or vehicle, or otherwise, any animal in a cruel manner, or so as to produce torture, is guilty of a misdemeanor.

SEC. 689. Every person who willfully administers any poison to an animal the property of another or maliciously exposes any poisonous substance with the intent that the same shall be taken or swallowed by any such animal is punishable by imprisonment in the state prison not exceeding three years or in the county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both fine and imprisonment.

SEC. 690. Every person who keeps a cow or any animal for the production of milk in a crowded or unhealthy place or in a deceased condition, or feeds such cow or animal upon any food that produces impure or unwholesome milk, is punishable by imprisonment in the county jail not exceeding three months or by fine not exceeding two hundred dollars, or both.

SEC. 691. Every person who instigates, promotes or carries on, or does any act as principal, assistant, referee or umpire, or is a witness of or in any way aids in the furtherance of any fight between cocks or other birds, or dogs, bulls, bears, or other animals premeditated by any person owning or having custody of such birds or animals, is punishable by imprisonment in the county jail not exceeding three months or by fine not exceeding two hundred dollars, or both.

TITLE XV.

MISCELLANEOUS OFFENSES.

Chapter I. Violation of the laws for the preservation of game and fish, and violation of bounty law.
" *II. Miscellaneous offenses.*

CHAPTER I.

VIOLATION OF THE LAWS FOR THE PRESERVATION OF GAME AND FISH AND VIOLATION OF BOUNTY LAW.

Section 700. Killing buffalo, moose. etc.
" *701. Killing deer, mountain sheep, etc.*
" *702. Killing game for speculative purposes.*

Section 703. Hunting with dogs.
" *704. Killing wild fowl.*
" *705. Killing geese or ducks.*
" *706. Killing singing birds.*
" *707. Destroying nests.*
" *708. Possession of the dead bodies, evidence.*
" *709. Unlawful fishing.*
" *710. Limitation of preceding section.*
" *711. Mountain trout not to be caught or sold.*
" *712. Transportation and selling of fish illegally caught.*
" *713. Putting sawdust in streams.*
" *714. Violation of bounty law.*
" *715. Disobeying fire warden.*

SEC. 700. Every person who willfully shoots or kills, or causes to be shot or killed, any bison, buffalo, moose, elk, beaver or quail within this State, is punishable by a fine not exceeding five hundred dollars, or imprisonment in the county jail not exceeding six months, or both. The provisions of this section do not apply to persons who raise or own any of said animals.

SEC. 701. Every person who willfully shoots or kills, or causes to be shot or killed, any deer, mountain sheep, Rocky Mountain goat or antelope between the first day of January and the fifteenth day of September of the same year, is punisable by fine not less than twenty nor exceeding one hundred dollars.

SEC. 702. Every person who willfully shoots or kills, or causes to be shot or killed at any time any deer, mountain sheep, Rocky Mountain goat, or antelope for the purpose of procuring the head or hide only, or for market, or for sale, or for speculative purposes, is punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two hundred and fifty dollars, or both.

SEC. 703. Every person who willfully hunts, chases, or runs with dogs any of the animals mentioned in the three preceding sections at any time, is punishable by fine not exceeding twenty-five dollars. The use of dogs, however, to capture any such animals after they have been wounded is not a violation of this section.

SEC. 704. Every person who willfully shoots or kills, or causes to be shot or killed, any grouse, prairie chicken, pheasant, fool hen, sage hen or partridge between the fifteenth day of November and the fifteenth day of August of the next ensuing year is punishable by fine not exceeding fifty dollars.

SEC. 705. Every person who willfully shoots or kills, or causes to be killed any wild geese or wild ducks between the first day of May and the 15th day of August of the same year, is punishable by a fine not exceeding twenty-five dollars.

SEC. 706. Every person who willfully shoots or otherwise kills or causes to be killed any robin, meadow-lark, blue bird, thrush, oriole, woodpecker, mocking-bird, goldfinch, snow-bird, cedar-bird, or any other of the small birds, known as singing birds, is punishable by a fine not exceeding ten dollars.

SEC. 707. Every person who willfully destroys the nests, or carries away the eggs from the nests of any of the birds or wild fowl mentioned in this chapter, is punishable by a fine not exceeding ten dollars.

SEC. 708. The possession of the dead bodies, or skin, or any part thereof, of the animals, birds, or wild fowls mentioned in this chapter is prima facie evidence that the person having such possession is guilty of killing the same.

SEC. 709. Every person who takes or catches fish in any of the streams, lakes, or ponds of this State, except with a pole, line, and hook, or spear, and every person who takes or catches fish with a hook baited with any poisonous thing or substance, or by means of dams, or the use of any fish-traps, grab-hooks, seines, or similar means for catching fish, or by the use of any drug, poison, giant powder or other explosive material, is guilty of a misdemeanor.

SEC. 710. It is, however, lawful to use a seine or catch-net for the purpose of catching fish in the Missouri river below Great Falls, and in the Yellowstone river below Clark's Fork, provided said seine or net has a mesh not less than one inch square, and it is also lawful to use a seine or net in any stream, lake, or pond for the purpose of taking fish to transport into or stock other streams, lakes, or ponds, or for the purpose of taking minnows, or small fish for bait.

SEC. 711. Every person who in any way catches any speckled or mountain trout for speculative purposes, for market or for sale, and every person who offers for sale or sells the same caught in the waters of this State is guilty of a misdemeanor.

SEC. 712. Every person who receives for transportation or carriage or transports or carries, or sells or offers for sale, fish that have been caught or taken contrary to the provisions of this chapter, knowing or having reason to believe, that such fish were so illegally caught or taken, is punishable by a fine not exceeding twenty-five dollars.

SEC. 713. Every person who operates any saw-mill built on or near any stream, who dumps, drops, carts, deposits or causes to be deposited in such stream any sawdust, bark, or debris coming from said saw-mill, is punishable by a fine not exceeding fifty dollars.

SEC. 714. Every person who violates any of the provisions of section 2070 of the Political Code relating to bounties for killing wild animals, is guilty of a misdemeanor and is punishable by a fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding six months or both.

SEC. 715. Every person who violates any of the provisions of section 2161 of the Political Code, relating to fire wardens, is punishable by a fine not exceeding one hundred dollars.

CHAPTER II.

OTHER AND MISCELLANEOUS OFFENSES.

Section 717. Neglect or postponement of telegraphic messages.
“ *718. Employe using information from messages.*
“ *719. Clandestinely learning the contents of a telegram.*
“ *720. Bribing telegraphic operator.*
“ *721. Aiding apprentices to run away or harboring them.*
“ *722. Vagrants.*
“ *723. Issuing or circulating paper money.*
“ *724. Officers of fire department issuing false certificates of exemption.*
“ *725. Abuse of school teachers.*
“ *726. Leaving gate of an enclosure open.*
“ *727. Obstructing ford near ferry.*
“ *728. Firing firearms.*
“ *729. Ditch overflowing on highway.*
“ *730. Stallion running at large.*
“ *731. Ram running at large.*
“ *732. Removing skin from animal.*
“ *733. Scabby sheep.*
“ *734. Bringing infected animals into State.*
“ *735. Disobeying orders of State veterinary surgeon.*
“ *736. Receiving and transporting diseased sheep.*
“ *737. Moving diseased sheep.*
“ *738. Importing diseased cattle into State.*
“ *739. Receiving or transporting diseased cattle.*
“ *740. Obstructing veterinary surgeon, etc.*
“ *741. Selling horses, etc. at auction.*
“ *742. Branding animals driven through the State.*
“ *743. Duty of butchers slaughtering animals.*
“ *744. Driving cattle, etc. from range.*
“ *745. Hides of animals killed.*
“ *746. Branding cattle running at large.*
“ *747. Using frying pan, etc., to brand.*
“ *748. Driving cattle on railroad.*
“ *749. False badges, etc.*
“ *750. Passes forbidden.*
“ *751. Animals with disease.*

SEC. 717. Every agent, operator, or employe of any telegraph office who willfully refuses or neglects to send any message received at such office for transmission, or willfully postpones the same out of its order, or willfully refuses or neglects to deliver any message received by telegraph, is guilty of a misdemeanor. Nothing herein contained shall be construed to require any message to be received, transmitted or delivered, unless the charges thereon have been paid or tendered, or to require the sending, receiving, or delivering of any message counseling, aiding, abetting, or encouraging treason against the government of the United States or of this State, or other resistance to lawful authority, or any message calculated to further any plan or purpose, or to instigate or encourage the perpetration of any unlawful act, or to facilitate the escape of any criminal or person accused of crime.

SEC. 718. Every agent, operator, or employe of any telegraph office, who in any way uses or appropriates any information derived by him from any private message passing through his hands, and addressed to another person, or in any other manner acquired by him by reason of his trust as such agent, operator, or employe, or trades or speculates upon any such information so obtained, or in any manner turns, or attempts to turn, the same to his own account, profit, or advantage, is punishable by imprisonment in the state prison not exceeding five years, or by imprisonment in the county jail not exceeding one year, or by fine not exceeding five thousand dollars, or by both fine and imprisonment.

SEC. 719. Every person who, by means of any machine, instrument, or contrivance, or in any other manner, willfully and fraudulently reads, or attempts to read, any message, or learn the contents thereof, whilst the same is being sent over any telegraph line, or willfully and fraudulently, or clandestinely, learns or attempts to learn the contents or meaning of any message, whilst the same is in any telegraph office, or is being received thereat or sent therefrom, or who uses or attempts to use, or communicates to others, any information so obtained, is punishable as provided in section 718.

SEC. 720. Every person who, by the payment or promise of any bribe, inducement, or reward, procures or attempts to procure any telegraph agent, operator, or employe to disclose any private message, or the contents, purport, substance, or meaning thereof, or offers to any such agent, operator, or employe any bribe, compensation, or reward, for the disclosure of any private information received by him by reason of his trust as such agent, operator, or employe, or uses or attempts to use any such information so obtained, is punishable as provided in section 718.

SEC. 721. Every person who willfully and knowingly aids, assists or encourages to run away, or who harbors or conceals any apprentice or person bound or held to service or labor, is guilty of a misdemeanor.

SEC. 722. 1. Every person (except an Indian) without visible means of living, who has the physical ability to work, and who does not seek employment, or labor when employment is offered him.

2. Every healthy beggar who solicits alms as a business.

3. Every person who roams about from place to place without any lawful business.

4. Every idle or dissolute person, or associate of known thieves, who wanders about the streets at late or unusual hours of the night, or who lodges in any barn, shed, outhouse, vessel, or place other than such as is kept for lodging purposes, without the permission of the owner or party entitled to the possession thereof.

5. Every lewd and dissolute person, who lives in and about houses of ill-fame, or who lives with or upon the earnings of a woman of bad repute; and,

6. Every common prostitute and common drunkard,

Is a vagrant, and punishable by imprisonment in the county jail not exceeding ninety days.

SEC. 723. Every person who makes, issues, or puts in circulation, any bill, check, ticket, certificate, promissory note, or the paper of any bank, to circulate as money, except as authorized by the laws of the United States, for the first offense is guilty of a misdemeanor, and for each and every subsequent offense is guilty of felony.

SEC. 724. Every officer of a fire department who willfully issues, or causes to be issued, any certificate of exemption to a person not entitled thereto, is guilty of a misdemeanor.

SEC. 725. Every parent, guardian, or other person, who upbraids, insults, or abuses any teacher of the public schools, in the presence or hearing of a pupil thereof, is guilty of a misdemeanor.

SEC. 726. Every person who willfully leaves open a gate leading in or out of any enclosed premises, whether enclosed by a lawful fence or not, is punishable by a fine not exceeding twenty-five dollars.

SEC. 727. Every person who owns and conducts a ferry, and who obstructs any ford at or near his ferry, or excludes or prevents the public from the free use of such ford, and who in any manner obstructs such ford, is punishable by a fine not exceeding one hundred dollars.

SEC. 728. Every person who willfully shoots or fires off, a gun, pistol, or any firearm, within the limits of any town or city, or of any private enclosure which contains a dwelling house, is punishable by a fine not exceeding twenty-five dollars.

SEC. 729. Every person who owns a ditch or flume, and allows the water therein to overrun the side and run into a public highway, or in or upon the property of another, is punishable by a fine not exceeding one hundred dollars.

SEC. 730. Every person who owns a stud horse, ridgeling, or unaltered male mule or jackass over the age of eighteen months, and allows the same to run at large, is punishable by fine not exceeding fifty dollars. Any person may take any such animal, and if the same is not claimed in five days, may castrate him at the expense of the owner.

SEC. 731. Every person who owns, controls, or has the custody of any ram or he goat, and allows the same to run at large between the first day of August and the first day of December of each year, is punishable by a fine not exceeding twenty dollars.

SEC. 732. Every person who removes the skin from an animal and leaves the carcass within one-quarter of a mile of a dwelling, is punishable by a fine not exceeding twenty-five dollars.

SEC. 733. Every person who removes from one point to another in any of the counties of this State, or from one county to another, any scabby sheep, or any sheep that have been scabby within one year, without the written certificate of the sheep inspector, or the written consent of all the sheep owners or managers along the route, and in the vicinity of the proposed location, is punishable by a fine not exceeding one thousand dollars. This section does not apply to scabby sheep imported into this State and against which quarantine has been declared.

SEC. 734. Every person who brings into this State sheep infected with scab or other infectious disease, or any horses, mules, asses or cattle infected with any contagious disease, is punishable by a fine not exceeding five hundred dollars.

SEC. 735. Every person who fails to comply with or disregards any lawful order or direction made by the State Veterinary Surgeon, or deputy, or deputy sheep inspector, under the provisions of the act concerning scab and other contagious diseases among sheep, or the act to prevent the spread of disease among cattle, is punishable by a fine not exceeding five hundred dollars.

SEC. 736. Every person who, after the publication of the proclamation of the Governor of this State prohibiting the importation of diseased sheep into this State, knowingly receives any such sheep from any of the prohibited districts, or transports the same within the limits of the State, is punishable by a fine not exceeding five hundred dollars.

SEC. 737. Every person in charge of sheep being shipped into this State, against which quarantine has been declared, as specified in the last preceding section, and fails to notify the deputy inspector of the county in which such sheep are brought, or allows any such sheep to pass over or upon any public highway, or upon the ranges occupied by other sheep, or within five miles of any corral in which sheep are regularly corralled, before such sheep are inspected as provided by law, is punishable by a fine not exceeding five hundred dollars.

SEC. 738. Every person who imports into this State any cattle, horses, mules, or asses, after the Governor has made proclamation holding in quarantine for the purpose of inspection for contagious or infectious diseases, such animals, and allows the same or any of them to leave the place of their first arrival in this State, until they have been examined by the State Veterinary Surgeon, and a certificate has been obtained therefrom that such animals are free from disease, or permits any of such animals to run at large, or to be removed, or to escape before such certificate has been received, is punishable by fine not exceeding five hundred dollars. This section does not apply to any animals driven in harness, or under yoke, or ridden by their owners into this State.

SEC. 739. Every person who, after the publication of such proclamation, knowingly receives or transports within the limits of this State, any animal mentioned in the preceding section, before the certificate mentioned therein has been given, is punishable by a fine not exceeding ten thousand dollars.

SEC. 740. Every person who owns or has the custody of any cattle, horses, mules or asses infected with a contagious disease, and fails to immediately report the same to the State Veterinary Surgeon, or conceals the existence of such disease, or attempts so to do, or willfully obstructs or resists the said Veterinary Surgeon in the discharge of his duty as provided by law, or sells, gives away or uses the meat or milk, or removes the skin or any part of such animal, is punishable by a fine not exceeding five hundred dollars.

SEC. 741. Every person who sells at auction any horses, mules, asses, or cattle, and fails to record in a book the name of the person who offers for sale said animals, the names of the owners with their residences, the color, brand, mark, size, and age of the animal offered for sale, or fails to keep said book open for the inspection of any person, is punishable by a fine not exceeding fifty dollars. This section does not apply to judicial sales,

SEC. 742. Every person who owns or has charge of any horses, cattle or sheep which are driven into or through any part of this State, and fails to plainly brand or mark the animals so driven, so that such animals may be readily distinguished from other animals, is punishable by a fine not exceeding three hundred dollars.

SEC. 743. Every person who is a butcher or slaughters cattle in this State, and fails to keep a true and correct record of all marks and brands of the cattle slaughtered by him, the name of the person from whom said cattle were bought, his residence, date of the purchase and delivery of the cattle, or fails to keep such record open for inspection at his place of business, or fails on or before the first day of each month to file a verified copy of such record in the office of the justice of the peace nearest his place of business and another verified copy in the office of the county clerk of the county in which he resides, is punishable by a fine not exceeding five hundred dollars, or imprisonment in the county jail not exceeding six months, or both.

SEC. 744. Every person who willfully drives or causes to be driven any cattle, horses, mules, sheep, or swine from their customary range without the permission of the owner thereof is punishable by imprisonment in the county jail not exceeding ninety days, or by fine not exceeding one hundred dollars, or both.

SEC. 745. Every person, except a licensed butcher, who offers to sell or sells any beef and fails to expose to the purchaser the hide of the animal to be sold, or sold, and does not keep such hide for ten days after the sale at his place of residence, or refuses to allow the same to be inspected by any other person, is punishable by imprisonment in the county jail not exceeding three months, or by fine not exceeding one hundred dollars, or both.

SEC. 746. Every person who brands or marks any calf or cattle that are running at large between the first day of December and the tenth day of May of the ensuing year, is punishable by imprisonment in the county jail not exceeding ninety days, or by a fine not exceeding one hundred dollars, or both. It is lawful, however, for the owner to brand at any time on his own premises in the presence of two other persons.

SEC. 747. Every person who, for the purpose of branding horses or cattle, uses as a brand a sash, frying pan, or any device whatever, which can be employed or used to obliterate a brand, is punishable by imprisonment in the county jail not exceeding sixty days, or by a fine not exceeding two hundred dollars, or both.

SEC. 748. Every person who willfully drives any animal upon any railroad track with intent to injure the corporation or persons owning the railroad, and such animal is killed or injured thereby, is punishable by imprisonment in the State prison not exceeding five years.

SEC. 749. Every person who willfully wears the badge of the Grand Army of the Republic, Knights of Labor, or any other society, and wears and uses the same to obtain aid or assistance thereby, unless he is entitled to wear and use the same under the rules and regulations of such society, is punishable by imprisonment in the county jail not exceeding thirty days, or by fine not exceeding twenty dollars, or both.

SEC. 750. No railroad or other transportation company must give or grant a free pass or passes or tickets at a discount, or free transportation, to any person holding any office of honor, trust or profit in this State, or to any clerk or deputy or attache thereof, whether executive, legislative, or judicial, or holding any county, township, or municipal office, and the acceptance of any such pass, ticket, or transportation by any such officer, works a forfeiture of his office, and the person receiving or giving such pass, ticket or transportation is guilty of a misdemeanor.

SEC. 751. It is unlawful for any person having in charge any horse, mule, ass, sheep, hog, or cattle, affected with a contagious disease, to allow such animal to run on any range or to be within any inclosure where they may come in contact with any other animal not so diseased.

All animals so affected must be immediately removed to an inside inclosure secure from other animals, or must be herded six miles away from any farm or ranch or from any other stock running at large or being herded.

Every person who neglects or refuses to remove, or inclose, or herd as aforesaid, such diseased animals, is guilty of a misdemeanor and liable in damages to the party injured.

TITLE XVI.

GENERAL PROVISIONS.

Section 760. Acts made punishable by different provisions of this Code.
" *761. Acts punishable under foreign law.*
" *762. Foreign conviction or acquittal.*
" *763. Contempts, how punishable.*
" *764. Mitigation of punishment in certain cases.*
" *765. Aiding in misdemeanor.*
" *766. Sending letters, when deemed complete.*
" *767. Removal from office for neglect of official duty.*
" *768. Omission to perform duty, when punishable.*
" *769. Attempts to commit crimes, when punishable.*
" *770. Attempts to commit crimes, how punishable.*
" *771. Restrictions upon the preceding sections.*
" *772. Second offense, how punished after conviction of former offense.*
" *773. Second offenses, how punished after conviction of attempt to commit a State prison offense.*
" *774. Foreign conviction for former offense.*
" *775. Second term of imprisonment, when to commence.*
" *776. When term of imprisonment commences, etc.*
" *777. Imprisonment for life.*
" *778. Fine may be added to imprisonment.*
" *779. Civil rights of convict suspended.*
" *780. Civil death.*
" *781. Limitations to two preceding sections.*
" *782. Convict competent witness.*
" *783. Person of convict protected.*
" *784. Forfeitures.*

SEC. 760. An act or omission which is made punishable in different ways by different provisions of this Code, may be punished under either of such provisions, but in no case can it be punished under more than one; an acquittal or conviction and sentence under either one bars a prosecution for the same act or omission under any other. In the cases specified in Sections 723, 773, and 774, the punishment therein prescribed must be substituted for those prescribed for a first offense, if the previous conviction is charged in the indictment and found by the jury.

SEC. 761. An act or omission declared punishable by this Code is not less so because it is also punishable under the laws of another State, government, or country, unless the contrary is expressly declared.

SEC. 762. Whenever on the trial of an accused person it appears that upon a criminal prosecution under the laws of another State, government, or country, founded upon the act or omission in respect to which he is on trial, he has been acquitted or convicted, it is a sufficient defense.

SEC. 763. A criminal act is not the less punishable as a crime because it is also declared to be punishable as a contempt.

SEC. 764. When it appears at the time of passing sentence upon a person convicted upon indictment, or information that such person has already paid a fine or suffered an imprisonment for the act of which he stands convicted, under an order judging it a contempt, the court authorized to pass sentence may mitigate the punishment to be imposed, in its discretion.

SEC. 765. Whenever an act is declared a misdemeanor, and no punishment for counseling or aiding in the commission of such act is expressly prescribed by law, every person who counsels or aids another in the commission of such act is guilty of a misdemeanor.

SEC. 766. In the various cases in which the sending of a letter is made criminal by this Code, the offense is deemed complete from the time when such letter is deposited in any post-office, or any other place, or delivered to any person, with intent that it shall be forwarded.

SEC. 767. In addition to the penalty affixed by express terms, to every neglect or violation of official duty on the part of public officers—State, county, city, town, or township—where it not so expressly provided, they may, in the discretion of the court, be removed from office.

SEC. 768. No person is punishable for an omission to perform an act, where such act has been performed by another person acting in his behalf, and competent by law to perform it.

SEC. 769. An act done with intent to commit a crime, and tending but failing to effect its commission, is an attempt to commit that crime. Any person may be convicted of an attempt to commit a crime, although it appears on the trial that the crime intended or attempted was perpetrated by such person in pursuance of such attempt, unless the court, in its discretion, discharges the jury and directs such person to be tried for such crime.

SEC. 770. Every person who attempts to commit any crime, but fails, or is prevented or intercepted in the perpetration thereof, is punishable, where no provision is made by law for the punishment of such attempts, as follows:

1. If the offense so attempted is punishable by imprisonment in the state prison for five years, or more, or by imprisonment in the county jail, the person guilty of such attempt is punishable by imprisonment in the state prison, or in the county jail, as the case may be, for a term not exceeding one-half the longest term of imprisonment prescribed upon a conviction of the offense so attempted.

2. If the offense so attempted is punishable by imprisonment in the state prison for any term less than five years, the person guilty of such attempt is punishable by imprisonment in the county jail for not more than one year.

3. If the offense so attempted is punishable by a fine, the offender convicted of such an attempt is punishable by a fine not exceeding one-half the largest fine which may be imposed upon a conviction of the offense so attempted.

4. If the offense so attempted is punishable by a fine and imprisonment, the offender convicted of such attempt may be punished by both such imprisonment and fine, not exceeding one-half the longest term of imprisonment and one-half the largest fine which may be imposed upon a conviction for the offense so attempted.

SEC. 771. The last two sections do not protect a person who, in attempting unsuccessfully to commit a crime, accomplishes the commission of another and different crime, whether greater or less in guilt, from suffering the punishment prescribed by law for the crime committed.

SEC. 772. Every person who, having been convicted of any offense punishable by imprisonment in the State prison, commits any crime after such conviction, is punishable therefor as follows:

1. If the offense of which such person is subsequently convicted is such that, upon a first conviction, an offender would be punishable by imprisonment in the State prison for any term exceeding five years, such person is punishable by imprisonment in the State prison not less than ten years.

2. If the subsequent offense is such that, upon a first conviction, the offender would be punishable by imprisonment in the State prison for five years, or any less term, then the person convicted of such subsequent offense is punishable by imprisonment in the State prison not exceeding ten years.

3. If the subsequent conviction is for petit larceny, or any

attempt to commit an offense which, if committed, would be punishable by imprisonment in the State prison not exceeding five years, then the person convicted of such subsequent offense is punishable by imprisonment in the State prison not exceeding five years.

SEC. 773. Every person who, having been convicted of petit larceny, or an attempt to commit an offense which, if perpetrated, would be punishable by imprisonment in the State prison, commits any crime after such conviction, is punishable as follows:

1. If the subsequent offense is such that, upon a first conviction, the offender would be punishable by imprisonment in the State prison for life, at the discretion of the court, such person is punishable by imprisonment in such prison during life.

2. If the subsequent offense is such that, upon a first conviction, the offender would be punishable by imprisonment in the State prison for any term less than life, such person is punishable by imprisonment in such prison for the longest term prescribed, upon a conviction for such first offense.

3. If the subsequent conviction is for petit larceny, or for an attempt to commit an offense which, if perpetrated, would be punishable by imprisonment in the State prison, then such person is punishable by imprisonment in such prison not exceeding five years.

SEC. 774. Every person who has been convicted in any other State, government, or country, of an offense which, if committed within this State, would be punishable by the laws of this State by imprisonment in the State prison, is punishable for any subsequent crime committed in this State in the manner prescribed in the last two sections, and to the same extent as if such first conviction had taken place in a court of this State.

SEC. 775. When any person has been convicted of two or more crimes before sentence has been pronounced upon him for either, the imprisonment to which he is sentenced upon the second or other subsequent conviction must commence at the termination of the first term of imprisonment to which he shall be adjudged, or at the termination of the second, or other subsequent term of imprisonment, as the case may be.

SEC. 776. The term of imprisonment fixed by the judgment in a criminal action commences to run only upon the actual delivery of the defendant at the place of imprisonment, and if, thereafter, during such term, the defendant by any legal means is temporarily released from such imprisonment, and subsequently returned thereto, the time during which he was at large must not be computed as part of such term.

SEC. 777. Whenever any person is declared punishable for a crime by imprisonment in the State prison for a term not less than any specified number of years, and no limit to the duration of such imprisonment is declared, the court authorized to pronounce judgment upon such conviction may, in its discretion, sentence such offender to imprisonment during his natural life, or for any number of years not less than that prescribed.

SEC. 778. Upon a conviction for any crime punishable by imprisonment in any jail or prison, in relation to which no fine is herein prescribed, the court may impose a fine on the offender not exceeding two hundred dollars, in addition to the punishment prescribed.

SEC. 779. A sentence of imprisonment in the State prison for any term less than life suspends all the civil rights of the person so sentenced, and forfeits all public offices and private trusts, authority, or power, during such imprisonment.

SEC. 780. A person sentenced to imprisonment in the State prison for life is thereafter deemed civilly dead.

SEC. 781. The provisions of the last two preceding sections must not be construed to render the person therein mentioned incapable of making and acknowledging a sale or conveyance of property.

SEC. 782. A person convicted of any offense is notwithstanding a competent witness in any cause or proceeding, civil or criminal, but the conviction may be proved for the purpose of affecting the weight of his testimony, either by the record or by his examination as such witness.

SEC. 783. The person of a convict sentenced to imprisonment in the state prison is under the protection of the law, and any injury to his person, not authorized by law, is punishable in the same manner as if he was not convicted or sentenced.

SEC. 784. No conviction of any person for crime works any forfeiture of any property, except in cases in which a forfeiture is expressly imposed by law; and all forfeitures to the State, in the nature of a deodand, or where any person shall flee from justice, are abolished.

PART II.

CRIMINAL PROCEDURE.

PRELIMINARY PROVISIONS.

Chapter I. Rights of defendants.
" II. Definitions.
" III. Criminal actions. How prosecuted.
" IV. Jurisdiction.

CHAPTER I.

RIGHTS OF DEFENDANTS.

Section 800. No person punishable but on legal conviction.
" 801. Public offenses, how prosecuted.
" 802. Criminal action defined.
" 803. Parties to a criminal action.
" 804. The party prosecuted known as defendant.
" 805. Rights of defendant in a criminal action.
" 806. Second prosecution for the same offense prohibited.
" 807. No person to be a witness against himself in a criminal action, or to be unnecessarily restrained.
" 808. No person to be convicted but upon verdict or judgment.

SEC. 800. No person can be punished for a public offense, except upon a legal conviction in a court having jurisdiction thereof.

SEC. 801. Every public offense must be prosecuted by indictment or information, except—

1. Where proceedings are had for the removal of civil officers of the State.
2. Offenses arising in the militia when in actual service and in the land and naval forces in time of war, or which the State may keep with the consent of Congress, in time of peace.
3. Offenses tried in justices' and police courts.

SEC. 802. The proceeding by which a party charged with a public offense is accused and brought to trial and punishment is known as a criminal action.

SEC. 803. A criminal action is prosecuted in the name of the State of Montana as a party, against the person charged with the offense.

SEC. 804. The party prosecuted in a criminal action is designated in this Code as the defendant.

SEC. 805. In all criminal prosecutions the accused shall have the right—

1. To appear and defend in person ~~and~~ by counsel;
2. To demand the nature and cause of the action;
3. To meet the witnesses against him face to face;
4. To have process to compel the attendance of witnesses in his behalf;
5. A speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, subject to the right of the State to have a change of venue for any of the causes for which the defendant may obtain the same.

SEC. 806. No person can be subjected to a second prosecution for a public offense for which he has once been prosecuted and convicted or acquitted.

SEC. 807. No person can be compelled, in a criminal action, to be a witness against himself; nor can a person charged with a public offense be subjected, before conviction, to any more restraint than is necessary for his detention to answer the charge.

SEC. 808. No person can be convicted of a public offense unless by the verdict of a jury, accepted and recorded by the court, or upon a plea of guilty, or upon a judgment of a court, a jury having been waived, in a criminal case not amounting to felony.

CHAPTER II.

DEFINITIONS.

Section 812. Complaint.
" *813. Indictment.*
" *814. Information.*
" *815. Magistrate.*
" *816. Who are.*
" *817. Peace officer.*

SEC. 812. A complaint is a statement in writing, made to a court or magistrate, that a person has been guilty of some designated offense.

SEC. 813. An indictment is an accusation in writing, presented by a grand jury to a competent court, charging a person with a public offense.

SEC. 814. An information is an accusation in writing, in form and substance like an indictment for the same offense, charging a person with a public offense, presented and signed by the county attorney and filed in the office of the clerk of the District Court.

SEC. 815. A magistrate is an officer having power to issue a warrant for the arrest of a person charged with a public offense.

SEC. 816. The following persons are magistrates:

1. The justices of the Supreme Court.
2. The judges of the District Court.
3. Justices of the peace.
4. Police magistrates in towns or cities.

SEC. 817. A peace officer is a sheriff of a county, or his deputy, or a constable, marshal or policeman of a township, city or town.

CHAPTER III.

CRIMINAL ACTIONS, HOW PROSECUTED.

Section 820. Criminal actions in justice court.
" *821. Criminal actions in district court.*
" *822. Prosecutions by information.*
" *823. Leave to file information.*
" *824. Order of court granting.*
" *825. County attorney to file information.*
" *826. Order entered in minutes of court.*
" *827. Officers not to disclose.*
" *828. Prosecutions by indictment, when.*

SEC. 820. All criminal actions in courts of Justices of the Peace and Police Courts must be prosecuted by complaint.

SEC. 821. All criminal actions in the District Court, except those on appeal, must be prosecuted by information or indictment.

SEC. 822. Prosecutions in the District Court must be by information:

1. In all cases where there has been an examination and commitment or admission to bail by a magistrate on a charge of crime; or,

2. In any case where there has been no examination or commitment or admission to bail, upon leave granted by the court for that purpose.

SEC. 823. Application for leave to file an information before an examination, commitment or admission to bail, must be made to the court on written motion, by the county attorney.

SEC. 824. The court by an order may grant such leave, or may require an examination before a magistrate, or may, upon affidavits filed by any person, order the county attorney to file an information against the persons charged with a public offense.

SEC. 825. If leave is granted, the county attorney may at any time thereafter file an information against the person named in the order granting leave to file the same, and thereupon the defendant named in the information must be arrested, as upon the finding of an indictment.

SEC. 826. After the arrest of such defendant the clerk must immediately enter the order granting leave to file the information in the minutes of the court.

SEC. 827. The fact that such leave has been granted, or that an information has been filed, must not be disclosed until after the defendant has been arrested.

SEC. 828. Prosecutions in the District Court must be by indictment in all cases where there has been no examination, commitment or admission to bail by a magistrate, except in the cases where the court grants leave to prosecute by information before an examination and commitment by a magistrate.

CHAPTER IV.

JURISDICTION.

Section 833. Jurisdiction of justices of the peace.
" 834. Jurisdiction of district court.

SEC. 833. The justices' courts shall have jurisdiction of the following public offense, committed within their respective counties, in which such courts are established:

1. Petit larceny.
2. Assault in the third degree as specified in Section 240 of this Code.
3. Breaches of the peace, riots, routs, affrays, committing a willful injury to property, and all misdemeanors punishable by fine not exceeding five hundred dollars, or imprisonment not exceeding six months, or both such fine and imprisonment.

And to act as examining and committing magistrate, as provided in this Code.

SEC. 834. The District Court has jurisdiction of all public offenses not otherwise provided for.

TITLE I.

THE PREVENTION OF PUBLIC OFFENSES.

Chapter I. Lawful resistance.
" II. The intervention of the officers of justice.
" III. Security to keep the peace.
" IV. Police in cities and towns, and their attendance at exposed places.
" V. Suppression of riots.

CHAPTER I.

LAWFUL RESISTANCE.

Section 840. Lawful resistance, by whom made.
" *841. By the party, in what cases and to what extent.*
" *842. By other parties, in what cases.*

SEC. 840. Lawful resistance to the commission of a public offense may be made—

1. By the party about to be injured.
2. By other parties.

SEC. 841. Resistance sufficient to prevent the offense may be made by the party about to be injured—

1. To prevent an offense against his person, or his family, or some member thereof.
2. To prevent an illegal attempt by force to take or injure property in his lawful possession.

SEC. 842. Any other person, in aid or defense of the person about to be injured, may make resistance sufficient to prevent the offense.

CHAPTER II.

THE INTERVENTION OF THE OFFICERS OF JUSTICE.

Section 845. Intervention of officers, in what cases.
" *846. Persons acting in their aid justified.*

SEC. 845. Public offenses may be prevented by the intervention of the officers of justice:

1. By requiring security to keep the peace.
2. By forming a police in cities and towns, and by requiring their attendance in exposed places.
3. By suppressing riots.

SEC. 846. When the officers of justice are authorized to act in the prevention of public offenses, other persons, who, by their command, act in their aid, are justified in so doing.

CHAPTER III.

SECURITY TO KEEP THE PEACE.

Section 850. Information of threatened offense.
" *851. Examination of complainant and witnesses.*
" *852. Warrant of arrest.*
" *853. Proceedings on charges being controverted.*
" *854. Person complained of, when to be discharged.*
" *855. Security to keep the peace, when required.*
" *856. Effect of giving or refusing to give security.*
" *857. Person committed for not giving security.*
" *858. Undertaking to be filed in clerk's office.*

Section 859. Security required for assault committed in court.
" *860. Undertaking, when broken.*
" *861. Undertaking, when and how to be prosecuted.*
" *862. Evidence of breach.*
" *863. Costs taxed against complainant.*
" *864. Appeal by complainant.*
" *865. Security for the peace.*

SEC. 850. A complaint may be laid before any of the magistrates mentioned in Section 816, that a person has threatened to commit an offense against the person or property of another.

SEC. 851. When the complaint is laid before such magistrate, he must examine on oath the complainant, and any witness he may produce, and must take their testimony in writing, and cause them to subscribe the same.

SEC. 852. If it appears upon such examination that there is just reason to fear the commission of the offense threatened, by the person so complained of, the magistrate must issue a warrant, directed generally to the sheriff of the county, or any constable, marshal, or policeman in the State, reciting the substance of the complaint, and commanding the officer forthwith to arrest the person complained of and bring him before the magistrate.

SEC. 853. When the person complained of is brought before the magistrate, if the charge be controverted, the magistrate must take testimony in relation thereto. The evidence must be reduced to writing, and subscribed by the witnesses.

SEC. 854. If it appears that there is no just reason to fear the commission of the offense alleged to have been threatened, the person complained of must be discharged.

SEC. 855. If, however, there is just reason to fear the commission of the offense, the person complained of may be required to enter into an undertaking in such sum, not exceeding five thousand dollars, as the magistrate may direct, with one or more sufficient sureties, to keep the peace toward the State, and particularly toward the complainant. The undertaking is valid and binding for one year, and may, upon the renewal of the complaint, be extended for a longer period, or a new undertaking may be required.

SEC. 856. If the undertaking required by the last section is given, the party complained of must be discharged. If he does not give it, the magistrate must commit him to prison, specifying in the warrant the cause of commitment, the requirement to give security, the amount thereof, and the omission to give the same.

SEC. 857, If the person complained of is committed for not giving the undertaking required, he may be discharged by any magistrate, upon giving the same.

SEC. 858. The undertaking must be filed by the magistrate; in the office of the clerk of the District Court.

SEC. 859. A person who, in the presence of a court or magistrate, assaults or threatens to assault another, or to commit an offense against his person or property, or who contends with another with angry words, may be ordered by the court or magistrate to give security, as in this chapter provided, and if he refuse so to do, may be committed as provided in Section 856.

SEC. 860. Upon the conviction of the person complained against of a breach of the peace, the undertaking is broken.

SEC. 861. Upon the county attorney's producing evidence of such conviction to the District Court of the county, the court must order the undertaking to be prosecuted, and the county attorney must thereupon commence an action upon it in the name of the State.

SEC. 862. In the action, the offense stated in the record of conviction must be alleged as a breach of the undertaking, and such record is conclusive evidence of the breach.

SEC. 863. When any person complained of is discharged by the magistrate, if it appears that the prosecution was malicious, or that there were no reasonable grounds for the complaint, it is the duty of the magistrate to adjudge that the complainant pay all costs of the proceedings, and judgment must thereupon be entered against him.

SEC. 864. A complainant against whom costs are adjudged, may appeal from such decision to the District Court in the county in which such proceedings were had, upon filing an undertaking as provided for in civil actions.

SEC. 865. Security to keep the peace, or be of good behavior, cannot be required except as prescribed in this chapter.

CHAPTER IV.

POLICE IN CITIES AND TOWNS, AND THEIR ATTENDANCE AT EXPOSED PLACES.

Section 870. Organization and regulation of the police.
" 871. Force to preserve the peace at public meetings.

SEC. 870. The organization and regulation of the police, in the cities and towns of this State, is governed by special laws and ordinances.

SEC. 871. The mayor or other officer having the direction of the police of a city or town must order a force, sufficient to preserve the peace, to attend any public meeting, when he is satisfied that a breach of the peace is reasonably apprehended.

CHAPTER V.

SUPPRESSION OF RIOTS.

Section 875. Power of sheriff in overcoming resistance.
" 876. Officer to certify to court the name of resisters, etc.

Section 877. Governor to order out military to aid in executing process.
" 878. Magistrates and officers to command rioters to disperse.
" 879. To arrest rioters if they do not disperse.
" 880. Officers who may order out the military.
" 881. Commanding officer and troops to obey the order.
" 882. Armed force to obey orders of whom.
" 883. Sheriff to have charge of national guard.
" 884. Conduct of troops.
" 885. Same.
" 886. Governor may declare a county in a state of insurrection.
" 887. May revoke the proclamation.

SEC. 875. When a sheriff or other public officer authorized to execute process, finds, or has reason to apprehend, that resistance will be made to the execution of the process, he may command as many male inhabitants of his county as he thinks proper to assist him in overcoming the resistance, and, if necessary, in seizing, arresting, and confining the persons resisting, their aiders and abettors.

SEC. 876. The officer must certify to the court from which the process issued, the names of the persons resisting, and their aiders and abettors, to the end that they may be proceeded against for their contempt of court.

SEC. 877. If it appears to the Governor that the civil power of any county is not sufficient to enable the sheriff to execute process delivered to him, or to quell any unlawful or riotous assembly, he must, upon the application of the sheriff of the county, order such portion as shall be sufficient, or the whole, if necessary, of the organized National Guard or enrolled militia of the State, to proceed to the assistance of the sheriff.

SEC. 878. Where any number of persons, whether armed or not, are unlawfully or riotously assembled, the sheriff of the county and his deputies, the officials governing the town or city, or the justices of the peace and constables thereof, or any of them, must go among the persons assembled, or as near to them as possible, and command them in the name of the State immediately to disperse.

SEC. 879. If the persons assembled do not immediately disperse, such magistrates and officers must arrest them, and to that end may command the aid of all persons present or within the county.

SEC. 880. When there is an unlawful or riotous assembly with the intent to commit a felony, or to offer violence to person or property, or to resist by force the laws of the State or of the United States, and the fact is made known to the Governor by any justice of the Supreme Court, or judge of the District Court, or sheriff of the county, or the mayor or marshal of a city, the Governor may issue an order directed to the commanding officer of a division or brigade of the organized National Guard, or enrolled militia of the State, to order his command, or such part thereof as may be necessary, into active service, and to appear at a time and place therein specified, to aid the civil authorities in suppressing violence and enforcing the laws.

SEC. 881. The organized National Guard or enrolled militia, or such portion thereof as shall be called into active service, as provided in Section 880, must appear at the time and place appointed, fully armed and equipped.

SEC. 882. When an armed force is called out for the purpose of suppressing an unlawful or riotous assembly, or arresting the offenders, and is placed under the temporary direction of any civil officer, as provided in Section 883, it must obey the orders in relation thereto of such civil officer.

SEC. 883. Whenever any portion of the National Guard or enrolled militia is called into active service to suppress an insurrection or rebellion, to disperse a mob, or to enforce the execution of the laws of this State or of the United States, it is competent for the commander-in-chief, or for the general acting in his stead, to place such troops under the temporary direction of the sheriff of any county.

SEC. 884. When the commander-in-chief, or general acting in his stead, shall call troops into active service, and shall not place them under the temporary direction of any civil officer, the commanding officer shall use his own discretion with respect to the propriety of attacking or firing upon any mob or unlawful assembly, but no officer who has been called out to sustain the civil authorities shall, under any pretense, or in compliance with any order, fire blank cartridges upon any mob or unlawful assemblage, under penalty of being cashiered by sentence of a court-martial; provided, that nothing in this chapter shall be construed as prohibiting any such troops from firing or charging upon such mob or assembly, without the order of such civil officer, in case they shall first be attacked or fired upon, or forcibly resisted in discharge of their duties.

SEC. 885. Every endeavor must be used, both by the magistrates and civil officers, and by the officer commanding the troops, which can be made consistently with the preservation of life, to induce or force the rioters to disperse, before an attack is made upon them by which their lives may be endangered.

SEC. 886. When the governor is satisfied that the execution of civil or criminal process has been forcibly resisted in any county by bodies of men, or that combinations to resist the execution of process by force exist in any county, and that the power of the county has been exerted, and has not been sufficient to enable the officers having the process to execute it, he may, on the application of the officer, or of the county attorney, or judge of the District Court of the county, by proclamation, published in such papers as he may direct, declare the county to be in a state of insurrection, and may order into the service of the State such number and description of the organized National Guard, or volunteer uniformed companies, or other militia of the State, as he deems necessary, to serve for such term and under the command of such officer as he may direct.

SEC. 887. The governor may, when he thinks proper, revoke the proclamation authorized by the last section, or declare that it shall cease at the time and in the manner directed by him.

TITLE II.

JUDICIAL PROCEEDINGS FOR THE REMOVAL OF PUBLIC OFFICERS BY IMPEACHMENT OR OTHERWISE.

Chapter I. Impeachments.
" II. The removal of civil officers otherwise than by impeachment.

CHAPTER I.

IMPEACHMENTS.

Section 890. Officers liable to impeachment.
" 891. Sole power of impeachment.
" 892. Articles, how prepared—Trial by Senate.
" 893. Articles of impeachment.
" 894. Time of hearing—Service of defendant.
" 895. Service, how made.
" 896. Proceedings on failure to appear.
" 897. Counsel may be appointed.
" 898. Defendant, after appearance, may answer or demur.
" 899. If demurrer is overruled, defendant must answer.
" 900. Senate to be sworn.
" 901. Two-thirds necessary to a conviction.
" 902. Judgment on conviction, how pronounced.
" 903. The same.
" 904. Nature of the judgment.
" 905. Effect of judgment of suspension.
" 906. Impeachment disqualifies until acquittal—Vacancy, how filled.
" 907. Presiding officer when Lieutenant-Governor is impeached.
" 908. Impeachment not a bar to indictment.

SEC. 890. The Governor and other State and Judicial officers, except justices of the peace, shall be liable to impeachment for high crimes and misdemeanors, or malfeasance in office.

SEC. 891. The sole power of impeachment shall vest in the House of Representatives; the concurrence of a majority of all the members being necessary to the exercise thereof. Impeachment shall be tried by the Senate sitting for that purpose, and the Senators shall be upon oath or affirmation to do justice according to law and evidence. When the Governor or Lieutenant Governor is on trial, the Chief Justice of the Supreme Court shall preside. No person shall be convicted without a concurrence of two-thirds of the Senators elected.

SEC. 892. All impeachments must be by resolution adopted, originated in, and conducted by managers elected by the House of Representatives, who must prepare articles of impeachment, present them at the bar of the Senate, and prosecute the same.

SEC. 893. When an officer is impeached by the House of Representatives, the articles of impeachment must be delivered to the President of the Senate.

SEC. 894. The Senate must assign a day for the hearing of the impeachment, and inform the House of Representatives thereof. The President of the Senate must cause a copy of the articles of impeachment, with a notice to appear and answer the same at the time and place appointed, to be served on the defendant not less than ten days before the day fixed for the hearing.

SEC. 895. The service must be made upon the defendant personally, or if he cannot, upon diligent inquiry, be found within the State, the Senate, upon proof of that fact, may order publication to be made, in such manner as it may deem proper, of a notice requiring him to appear at a specified time and place and answer the articles of impeachment.

SEC. 896. If the defendant does not appear, the Senate, upon proof of service or publication, as provided in the two last sections, may, of its own motion or for cause shown, assign another day for hearing the impeachment, or may proceed, in the absence of the defendant, to trial and judgment.

SEC. 897. If the defendant appear, and is unable to procure the assistance of counsel, it is the duty of the President of the Senate to appoint some suitable person to assist him in his defence; if the defendant is served by publication and fails to appear, it is the duty of the President of the Senate to appoint some person or counsel to appear in his behalf and make defense for him.

SEC. 898. When the defendant appears, he may in writing object to the sufficiency of the articles of impeachment, or he may answer the same by an oral plea of not guilty, which plea must be entered upon the journal, and puts in issue every material allegation of the articles of impeachment.

SEC. 899. If the objection to the sufficiency of the articles of impeachment is not sustained by a majority of the members of the Senate, the defendant must be ordered forthwith to answer the articles of impeachment. If he then pleads guilty, the Senate must render judgment of conviction against him. If he plead not guilty or refuses to plead, the Senate must, at such time as it may appoint, proceed to try the impeachment.

SEC. 900. At the time and place appointed, and before the Senate proceeds to act on the impeachment, the secretary must administer to the President of the Senate, and the President of the Senate to each of the members of the Senate then present, an oath truly and impartially to hear, try, and determine the impeachment; and no member of the Senate can act or vote upon the impeachment, or upon any question arising thereon, without having taken such oath.

SEC. 901. The defendant cannot be convicted on impeachment without the concurrence of two-thirds of the members elected, voting by ayes and noes, and if two-thirds of the members elected do not concur in a conviction, he must be acquitted.

SEC. 902. After conviction, the Senate must, at such time as it may appoint, pronounce judgment, in the form of a resolution entered upon the journals of the Senate.

SEC. 903. On the adoption of the resolution by a majority of the members present who voted on the question of acquittal or conviction, it becomes the judgment of the Senate.

SEC. 904. The judgment may be that the defendant be suspended, or that he be removed from office and disqualified to hold any office of honor, trust, or profit, under the State.

SEC. 905. If judgment of suspension is given, the defendant, during the continuance thereof, is disqualified from receiving the salary, fees, or emoluments, of the office.

SEC. 906. Whenever articles of impeachment against any officer subject to impeachment, are presented to the Senate, such officer is temporarily suspended from his office, and cannot act in his official capacity until he is acquitted. Upon such suspension of any officer, other than the Governor, his office must be at once temporarily filled by an appointment made by the Governor, with the advice and consent of the Senate, until the acquittal of the party impeached; or, in case of his removal, until the vacancy is filled at the next election, as required by law.

SEC. 907. If the lieutenant-governor is impeached, notice of the impeachment must be immediately given to the Senate by the House of Representatives, that another president may be chosen.

SEC. 908. If the offense for which the defendant is convicted on impeachment, is also the subject of an indictment or information, the indictment or information is not barred thereby.

CHAPTER XII.

REMOVAL OF CIVIL OFFICERS OTHERWISE THAN BY IMPEACHMENT.

Section 912. Officers subject to removal.
" *913. Accusation to be presented by the grand jury.*
" *914. Form of accusation.*
" *915. To be transmitted to the county attorney, and copy served.*
" *916. Proceedings if defendant does not appear.*
" *917. Defendant may object to or deny the accusation.*
" *918. Form of objection.*
" *919. Manner of denial.*
" *920. If objections overruled, defendant must answer.*
" *921. Proceedings on plea of guilty, refusal to answer, etc.*
" *922. Trial by jury.*
" *923. State and defendant entitled to process for witnesses.*
" *924. Judgment upon conviction, and its form.*
" *925. Appeal, how taken. Defendant to be suspended and vacancy filled.*
" *926. Proceedings for the removal of a county attorney.*
" *927. Removal of public officers by summary proceedings.*

SEC. 912. All officers not liable to impeachment are subject to removal for misconduct or malfeasance in office, as provided in this chapter.

SEC. 913. An accusation in writing against any district, county, township, or municipal officer, for willful or corrupt misconduct or malfeasance in office, may be presented by the grand jury of the county for which the officer accused is elected or appointed.

SEC. 914. The accusation must state the offense charged, in ordinary and concise language, and without repetition.

SEC. 915. The accusation must be delivered by the foreman of the grand jury to the county attorney of the county, except when he is the officer accused, who must cause a copy thereof to be served upon the defendant, and require, by notice in writing of not less than ten days, that he appear before the District Court of the county, at a time mentioned in the notice, and answer the accusation. The original accusation must then be filed with the clerk of the court.

SEC. 916. The defendant must appear at the time appointed in the notice and answer the accusation, unless for some sufficient cause the court assign another day for that purpose. If he does not appear, the court may proceed to hear and determine the accusation in his absence.

SEC. 917. The defendant may answer the accusation either by objecting to the sufficiency thereof, or of any article therein, or by denying the truth of the same.

SEC. 918. If he objects to the legal sufficiency of the accusation, the objection must be in writing, but need not be in any specific form, it being sufficient if it presents intelligibly the grounds of the objection.

SEC. 919. If he denies the truth of the accusation, the denial may be oral and without oath, and must be entered upon the minutes.

SEC. 920. If an objection to the sufficiency of the accusation is not sustained, the defendant must answer thereto forthwith.

SEC. 921. If the defendant pleads guilty, the court must render judgment of conviction against him. If he denies the matters charged or refuses to answer the accusation, the court must immediately, or at such time as it may appoint, proceed to try the accusation.

SEC. 922. The trial must be by a jury, and conducted in all respects in the same manner as the trial of an indictment for a misdemeanor.

SEC. 923. The county attorney and the defendant are respectively entitled to such process as may be necessary to enforce the attendance of witnesses, as upon a trial of an indictment.

SEC. 924. Upon a conviction, the court must, at such time as it may appoint, pronounce judgment that the defendant be removed from office; but, to warrant a removal, the judgment must be entered upon the minutes, and the causes of removal must be assigned therein.

SEC. 925. From a judgment of removal an appeal may be taken to the Supreme Court, in the same manner as from a judgment in a civil action; but until such judgment is reversed, the defendant is suspended from his office. Pending the appeal, the office must be filled as in case of a vacancy.

SEC. 926. The same proceedings may be had on like grounds for the removal of a county attorney, except that the accusation must be delivered by the foreman of the grand jury to the clerk, and by him to a judge of the District Court of the county, who must thereupon appoint some one to act as prosecuting officer in the matter, or place the accusation in the hands of the county attorney of an adjoining county, and require him to conduct the proceedings.

SEC. 927. When an accusation in writing, verified by the oath of any person, is presented to a District Court, alleging that any officer within the jurisdiction of the court has been guilty of charging and collecting illegal fees for services rendered, or to be rendered, in his office, or has refused or neglected to perform the official duties pertaining to his office, the court must cite the party charged to appear before the court at a time not more than ten nor less than five days from the time the accusation was presented; and on that day, or some other subsequent day not more than twenty days from that on which the accusation was presented, must proceed to hear, in a summary manner, the accusation and evidence offered in support of the same, and the answer and evidence offered by the party accused; and if, on such hearing, it appears that the charge is sustained, the court must enter a judgment that the party accused be deprived of his office, and for such costs as are allowed in civil cases.

TITLE III.

PROCEEDINGS IN CRIMINAL ACTIONS.

Chapter I. The local jurisdiction of public offenses.
" II. The time of commencing criminal actions.
" III. The complaint.
" IV. The warrant of arrest.
" V. Arrest, by whom and how made.
" VI. Retaking after an escape or rescue.
" VII. Examination of the case and discharge of defendant, or holding him to answer.

CHAPTER I.

THE LOCAL JURISDICTION OF PUBLIC OFFENSES.

Section 932. Jurisdiction of offenses committed in this State.
" 933. Offenses committed without, but consummated within this State.
" 934. When an inhabitant of this State is concerned in a duel out of the same, and a party wounded dies therein.
" 935. Leaving the State to evade the statute against dueling.
" 936. Offense committed partly in one county and partly in another.
" 937. Committed on the boundary, etc., of two or more counties.
" 938. Jurisdiction of an offense on board a vessel or car.
" 939. Jurisdiction for kidnaping or abduction.
" 940. Jurisdiction of an indictment for bigamy or incest.
" 941. Property feloniously taken in one county and brought into another.
" 942. Jurisdiction for escaping from prison.
" 943. Jurisdiction for treason committed out of the State.

Section 944. Jurisdiction for stealing, etc., property, out of State, and brought therein.
" 945. Jurisdiction for murder, etc., where the injury was inflicted in one county, and the party dies out of that county.
" 946. On an indictment against an accessory.
" 947. Of principals who are not present, etc., at commission of the principal offense.
" 948. Conviction or acquittal in another State a bar, where the jurisdiction is concurrent.
" 949. Conviction or acquittal in another county a bar, where the jurisdiction is concurrent.
" 950. Jurisdiction of prize fight.

SEC. 932. Every person is liable to punishment by the laws of this State, for a public offense committed by him therein, except where it is by law cognizable exclusively in the courts of the United States.

SEC. 933. When the commission of a public offense, commenced without the state, is consummated within its boundaries, the defendant is liable to punishment therefor in this State, though he was out of the State at the time of the commission of the offense charged. If he consummated it in this State, through the intervention of an innocent or guilty agent, or any other means proceeding directly from himself, in such case the jurisdiction is in the county in which the offense is consummated.

SEC. 934. When an inhabitant or resident of this State, by previous appointment or engagement, fights a duel or is concerned as a second therein, out of the jurisdiction of this State, and in the duel a wound is inflicted upon a person, whereof he dies in this State, the jurisdiction of the offense is in the county where the death happens.

SEC. 935. When an inhabitant of this State leaves the same for the purpose of evading the operation of the provisions of the Code relating to dueling and challenges to fight, with the intent or for the purpose of doing any of the acts prohibited therein, the jurisdiction is in the county of which the offender was an inhabitant when the offense was committed.

SEC. 936. When a public offense is committed in part in one county and in part in another, or the acts or effects thereof constituting or requisite to the consummation of the offense occur in two or more counties, the jurisdiction is in either county.

SEC. 937. When a public offense is committed on the boundary of two or more counties, or within five hundred yards thereof, the jurisdiction is in either county.

SEC. 938. When an offense is committed in this State, on board a vessel navigating a river, bay, slough, lake, or canal, or lying therein, in the prosecution of her voyage, the jurisdiction is in any county through which the vessel is navigated in the course of her voyage, or in the county where the voyage terminates; and when the offense is committed in this State, on a railroad train or car prosecuting its trip, the jurisdiction is in any county through which the train or car passes in the course of her trip, or in the county where the trip terminates.

SEC. 939. The jurisdiction of the following cases is in any county in which the offense was committed, or into or out of which the person upon whom the offense was committed has been brought:

1. For forcibly, fraudulently taking, inveigling or kidnaping any person to be sent out of the State for any purpose.

2. For the taking or enticing away any female for the purpose of prostitution or concubinage.

3. For the taking, decoying, or enticing away a child under the age of fifteen years, with intent to conceal or detain it from its parents, guardians, or other person having lawful charge thereof.

SEC. 940. When the offense, either of bigamy or incest, is committed in one county and the defendant is apprehended in another, the jurisdiction is in either county.

SEC. 941. When property taken in one county by burglary, robbery or larceny, has been brought into another, the jurisdiction of the offense is in either county. But if at any time before the conviction of the defendant in the latter, he is indicted in the former county, the sheriff of the latter county must, upon demand, deliver him to the sheriff of the former.

SEC. 942. The jurisdiction of a criminal action for escaping from prison is in any county of the State.

SEC. 943. The jurisdiction of a criminal action for treason, when the overt act is committed out of the State, is in any county of the State.

SEC. 944. The jurisdiction of a criminal action for stealing in any other State the property of another, or receiving it, knowing it to have been stolen, and bringing the same into this State, is in any county into or through which such stolen property has been brought.

SEC. 945. The jurisdiction of a criminal action for murder or manslaughter, when the injury which caused the death was inflicted in one county, and the party injured dies in another county, or out of the State, is in the county where the injury was inflicted.

SEC. 946. In the case of an accessory in the commission of a public offense, the jurisdiction is in the county where the offense of the accessory was committed, notwithstanding the principal offense was committed in another county.

SEC. 947. The jurisdiction of a criminal action against a principal in the commission of a public offense, when such principal is not present at the commission of the principal offense, is in the same county it would be under this Code, if he were present and aiding and abetting therein.

SEC. 948. When an act charged as a public offense is within the jurisdiction of another State or country as well as of this State, a conviction or acquittal thereof in the former is a bar to the prosecution or indictment therefor in this State.

SEC. 949. When an offense is within the jurisdiction of two or more counties, a conviction or acquittal thereof in one county is a bar to prosecution or indictment therefor in another.

SEC. 950. The jurisdiction of a violation of sections 459, 460 and 461 of the Penal Code, or a conspiracy to violate either of said sections, is in any county, first, in which any act is done toward the commission of the offense; or, second, into, out of, or through which the offender passed to commit the offense; or, third, where the offender is arrested.

CHAPTER II.

THE TIME OF COMMENCING CRIMINAL ACTIONS.

Section 955. Prosecution for murder may be commenced at any time.
" *956. Limitation of five years in all other felonies.*
" *957. Limitation of one year in misdemeanors.*
" *958. Exception when defendant is out of the State.*
" *959. Indictment found, when presented and filed.*
" *960. Time not counted.*

SEC. 955. There is no limitation of time within which a prosecution for murder or manslaughter must be commenced. It may be commenced at any time after the death of the person killed.

SEC. 956. An indictment for any other felony than murder or manslaughter must be found, or an information filed, within five years after its commission.

SEC. 957. An indictment for any misdemeanor must be found, or an information filed or complaint made, within one year after its commission.

SEC. 958. If, when the offense is committed, the defendant is out of the State, the indictment may be found or an information or complaint filed, within the time herein limited, after his coming within the State, and no time during which the defendant is not an inhabitant of, or usually resident within this State, is part of the limitation.

SEC. 959. An indictment is found within the meaning of this chapter when it is presented by the grand jury in open court, and there received and filed.

SEC. 960. When an indictment, complaint, or information is quashed, set or aside, or judgment thereon is reversed, the time during which the same was pending must not be computed as part of the time of the limitation prescribed for the offense.

CHAPTER III.

THE COMPLAINT.

Section 965. Complaint, must contain what.
" *966. Duty to make complaint.*
" *967. Duty of magistrate.*
" *968. Arrest without warrant.*
" *969. Magistrate must issue subpoenas.*

SEC. 965. The complaint must state:

1. The name of the person accused, if known, or if not known, he may be designated by any other name.

2. The county in which the offense was committed.

3. The general name of the offense.

4. The person against whom, or against whose property, the offense was committed, if known; and,

5. If the offense be against the property of any person, a general description of such property.

The complaint must be subscribed and sworn to by the complainant.

SEC. 966. Every person who has reason to believe that a public offense has been committed and that a certain person has committed such offense, must make complaint of such person before a magistrate of the township in which the offense was committed, or if there is no magistrate in such township, before the nearest magistrate.

SEC. 967. When a complaint is made before a magistrate charging a person with the commission of a public offense, such magistrate must examine the complainant, under oath, as to his knowledge of the commission of the offense charged, and he may also examine any other person.

If from such examination, or from any other facts which may lawfully come to the knowledge of the magistrate, it appears to him probable that the alleged offense has been committed within his jurisdiction and that the person accused committed it, such magistrate must immediately issue his warrant for the arrest of such person.

SEC. 968. When any officer or private person shall bring any person he has arrested, without a warrant, before a magistrate, it is the duty of such officer or person to specify the charge upon which he has made the arrest; it is then the duty of the magistrate or county attorney to make and file a complaint of the offense charged, and cause the officer or person, or some other person, to subscribe and make oath to such complaint; and the proceedings must be the same thereafter as are had in cases where arrests are made under warrant.

SEC. 969. Any person making complaint of a public offense must inform the magistrate of all persons who have any knowledge of the commission of the offense, and the magistrate, at the time of issuing the warrant, must issue subpœnas for each person, requiring them to attend, at a specified time, as witnesses.

CHAPTER IV.

THE WARRANT OF ARREST.

Section 974. Form of warrant.
" *975. Name or description of the defendant in the warrant, and statement of the offense.*
" *976. Warrant to be directed to and executed by peace officer.*
" *977. To what peace officers warrants are to be directed.*
" *978. Same; and when and how executed in another county.*
" *979. Officer may arrest in any county.*
" *980. Defendant to be taken before the magistrate issuing the warrant, etc.*
" *981. Defendant arrested for misdemeanor in another county, to be admitted to bail.*
" *982. Proceedings on taking bail from the defendant in such cases.*
" *983. When bail is not given. When magistrate who issued warrant cannot act.*
" *984. When magistrate who issued warrant must act.*
" *985. No delay in taking defendant before magistrate.*
" *986. Proceedings where defendant is taken before another magistrate.*
" *987. Proceedings for offenses triable in another county.*
" *988. Duty of officer.*
" *989. Admission to bail.*
" *990. Officer in charge of prisoner.*
" *991. Same.*

SEC. 974. A warrant of arrest is an order in writing, in the name of the State signed, by a magistrate, commanding the arrest of the defendant, and may be substantially in the following form:

County of ————.

The State of Montana to any sheriff, constable, marshal, or policeman of said State, or of the county of ————:

Complaint on oath having been this day made before me, by A. B., that the crime of ———— (designating it) has been committed, and accusing C. D. thereof, you are therefore commanded forthwith to arrest the above-named C. D., and bring him before me at (naming the place), or in case of my absence or inability to act, before the nearest or most accessible magistrate in this county.

Dated at ————, this —— day of ———, eighteen——.

SEC. 975. The warrant must specify the name of the defendant, or, if it is unknown to the magistrate, the defendant may be designated therein by any name. It must also state the time of issuing it, and the county, city, or township where it was issued, and be signed by the magistrate, with his name of office.

SEC. 976. The warrant must be directed to and executed by a peace officer.

SEC. 977. If a warrant is issued by a justice of the Supreme Court, or judge of a District Court, it may be directed generally to any sheriff, constable, marshal, or policeman in the State, and may be executed by any of those officers to whom it may be delivered in any part of the State.

SEC. 978. If it is issued by any other magistrate, it may be directed generally to any sheriff, constable, marshal, or policeman in the county in which it is issued, and may be executed by such officer in any part of the State.

SEC. 979. An officer pursuing a person for whom he has a warrant, into another county than the one in which he holds office, may, in the county where he finds such person, call for assistance, and command aid, and exercise authority, as if in his own county.

SEC. 980. If the offense charged is a felony, the officer making the arrest must take the defendant before the magistrate who issued the warrant, or some other magistrate of the same county, as provided in the warrant of arrest.

SEC. 981. If the offense charged is a misdemeanor, not within the jurisdiction of the magistrate to punish, and the defendant is arrested in another county, the officer must, upon being required by the defendant, take him before a magistrate in that county, who must admit the defendant to bail, and take bail from him accordingly.

SEC. 982. On taking the bail, the magistrate must certify that fact on the warrant, and deliver the warrant and undertaking of bail to the officer having charge of the defendant. The officer must then discharge the defendant from arrest, and must, without delay, deliver the warrant and undertaking to the clerk of the court at which the defendant is required to appear.

SEC. 983. If, on the admission of the defendant to bail, the bail is not forthwith given, the officer must take the defendant before the magistrate who issued the warrant, or, in case of his absence or inability to act, before the nearest or most accessible magistrate in the same county, and must at the same time deliver to the magistrate the warrant, with his return thereon indorsed and subscribed by him.

SEC. 984. If the offense charged is within the jurisdiction of the magistrate to try and punish upon conviction, the defendant, if arrested in another county, must be taken before the magistrate who issued the warrant, or if he is absent, then to some other magistrate, as provided in the next preceding section.

SEC. 985. The defendant must in all cases be taken before the magistrate without unnecessary delay, and any attorney-at-law entitled to practice in courts of record of Montana, may, at the request of the prisoner after such arrest, visit the person so arrested.

SEC. 986. If the defendant is brought before a magistrate other than the one who issued the warrant, the complaint on which the warrant was issued must be sent to that magistrate.

SEC. 987. When a complaint is made before a magistrate of the commission of a public offense triable in another county of the State, but showing that the defendant is in the county where the complaint is made, the same proceedings must be had as prescribed in this chapter, except that the warrant must require the defendant to be taken before the nearest or most accessible magistrate of the county in which the offense is triable, and the complaint must be delivered by the magistrate to the officer to whom the warrant is delivered.

SEC. 988. The officer who executes the warrant must take the defendant betore the nearest or most accessible magistrate of the county in which the offense is triable, and must deliver to him the complaint and the warrant, with his return indorsed thereon, and the magistrate must then proceed in the same manner as upon a warrant issued by himself.

SEC. 989. If the offense charged in the warrant issued pursuant to Section 987 is a misdemeanor not within the jurisdiction of the magistrate to try and punish, the officer must, upon being required by the defendant, take him before a magistrate of the county in which the warrant was issued, who must admit the defendant to bail, and immediately transmit the warrant and complaint and undertaking, to the clerk of the court in which the defendant is required to appear.

SEC. 990. An officer who has arrested a defendant on a criminal charge, in any county, may carry such prisoner through such parts of any county or counties as shall be in the ordinary route of travel from the place where the prisoner shall have been arrested, to the place where he is to be conveyed and delivered under the process by which the arrest shall have been made; and such conveyance shall not be deemed an escape.

SEC. 991. While passing through such other county or counties the officers having the prisoner in their charge shall not be liabie to arrest on civil process; and they shall have the like power to require any citizen to aid in securing such prisoner, and to retake him if he escapes, as if they were within their own county; and a refusal or neglect to render such aid shall be an offense, in the same manner as if they were officers of the county where such aid shall be required.

CHAPTER V.

ARREST, BY WHOM AND HOW MADE.

Section 995. Arrest defined. By whom made.
" *996. How an arrest is made and what restraint allowed.*
" *997. Arrests by peace officers.*
" *998. Arrests by private persons.*
" *999. Magistrates may order arrest.*
" *1000. Persons making arrest may summon assistance.*
" *1001. When the arrest may be made.*
" *1002. Arrest, how made.*
" *1003. Warrant must be shown, when.*
" *1004. What force may be used.*
" *1005. Doors and windows may be broken, when.*
" *1006. Same.*
" *1007. Weapons may be taken from persons arrested.*
" *1008. Duty of private person who has made an arrest.*
" *1009. Duty of officer arresting with warrant.*
" *1010. Person arrested without a warrant to be taken before a magistrate. Information to be filed.*
" *1011. Arrest by telegraph.*
" *1012. Same.*
" *1013. Examination of defendant where no other provision is made.*
" *1014. Trial and judgment of misdemeanor.*

SEC. 995. An arrest is taking a person into custody in a case and in the manner authorized by law. An arrest may be made by a peace officer or by a private person.

SEC. 996. An arrest is made by an actual restraint of the person of the defendant or by his submission to the custody of an officer. The defendant must not be subjected to any more restraint than is necessary for his arrest and detention.

SEC. 997. A peace officer may make an arrest in obedience to a warrant delivered to him, or may, without a warrant, arrest a person—

1. For a public offense committed or attempted in his presence.

2. When a person arrested has committed a felony, although not in his presence.

3. When a felony has in fact been committed, and he has reasonable cause for believing the person arrested to have committed it.

4. On a charge made, upon a reasonable cause, of the commission of a felony by the party arrested.

5. At night, when there is reasonable cause to believe that he has committed a felony.

SEC. 998. A private person may arrest another—

1. For a public offense committed or attempted in his presence.

2. When the person arrested has committed a felony, although not in his presence.

3. When a felony has in fact been committed, and he has reasonable cause for believing the person arrested to have committed it.

SEC. 999. A magistrate may orally order a peace officer or private person to arrest any one committing or attempting to commit a public offense in the presence of such magistrate.

SEC. 1000. Any person making an arrest may orally summon as many persons as he deems necessary to aid him therein.

SEC. 1001. If the offense charged is a felony, the arrest may be made on any day, and at any time of the day or night. If it is a misdemeanor, the arrest cannot be made at night, unless upon the direction of the magistrate, endorsed upon the warrant.

SEC. 1002. The person making the arrest must inform the person to be arrested of the intention to arrest him, of the cause of the arrest, and the authority to make it, except when the person to be arrested is actually engaged in the commission of or an attempt to commit an offense, or is pursued immediately after its commission, or after an escape.

SEC. 1003. If the person making the arrest is acting under the authority of a warrant, he must show the warrant, if required.

SEC. 1004. When the arrest is being made by an officer under the authority of a warrant, after information of the intention to make the arrest, if the person to be arrested either flees or forcibly resists, the officer may use all necessary means to effect the arrest.

SEC. 1005. To make an arrest, a private person, if the offense be a felony, and in all cases a peace officer, may break open the door or window of the house in which the person to be arrested is, or in which they have reasonable grounds for believing him to be, after having demanded admittance and explained the purpose for which admittance is desired.

SEC. 1006. Any person who has lawfully entered a house for the purpose of making an arrest may break open the door or window thereof, if detained therein, when necessary for the purpose of liberating himself, and an officer may do the same, when necessary for the purpose of liberating a person who, acting in his aid, lawfully entered for the purpose of making an arrest, and is detained therein.

SEC. 1007. Any person making an arrest may take from the person arrested all offensive weapons which he may have about his person, and must deliver them to the magistrate before whom he is taken.

SEC. 1008. A private person who has arrested another for the commission of a public offense must, without unnecessary delay, take the person arrested before a magistrate, or deliver him to a peace officer.

SEC. 1009. An officer making an arrest, in obedience to a warrant, must proceed with the person arrested as commanded by the warrant, or as provided by law.

SEC. 1010. When an arrest is made without a warrant by a peace officer or private person, the person arrested must, without unnecessary delay, be taken before the nearest or most accessible magistrate in the county in which the arrest is made, and a complaint, stating the charge against the person, must be made before such magistrate.

SEC. 1011. A justice of the Supreme Court, or a judge of the District Court, may, by an indorsement under his hand upon a warrant of arrest, authorize the service thereof by telegraph, and thereafter a telegraphic copy of such warrant may be sent by telegraph to one or more peace officers; and such copy is as effectual in the hands of any officer, and he must proceed in the same manner under it, as though he held an original warrant issued by the magistrate making the indorsement thereon.

SEC. 1012. Every officer causing telegraphic copies of warrants to be sent must certify as correct, and file in the telegraph office from which such copies are sent, a copy of the warrant and indorsement thereon, and must return the original with a statement of his action thereunder.

SEC. 1013. Every person arrested by warrant for any offense, where no other provision is made for his examination, must be brought before some magistrate of the county in which the warrant was issued, and the warrant, with the proper return thereon, signed by the person who made the arrest, must be delivered to such magistrate.

SEC. 1014. If the offense charged is a misdemeanor within the jurisdiction of the magistrate to try and render judgment therein, a trial must be had as provided in Part II., Title XI., Chapter I., of this Code.

CHAPTER VI.

RETAKING AFTER AN ESCAPE OR RESCUE.

Section 1020. May be at any time or in any place in the State.
" 1021. May break open door or window if admittance refused.

SEC. 1020. If a person arrested escapes or is rescued, the person from whose custody he escaped or was rescued, may immediately pursue and retake him at any time and in any place within the State.

SEC. 1021. To retake the person escaping or rescued, the person pursuing may break open any outer or inner door or window of a dwelling house, if, after notice of his intention, he is refused admittance.

CHAPTER VII.

EXAMINATION OF THE CASE, AND DISCHARGE OF THE DEFENDANT, OR HOLDING HIM TO ANSWER.

Section 1025. Magistrate to inform the defendant of the charge, and his right to counsel.
" *1026. Time to send and sending for counsel.*
" *1027. Examination, when to proceed.*
" *1028. On postponement, defendant to be committed or discharged on bail.*
" *1029. Form of commitment.*
" *1030. Magistrate must issue subpoenas.*
" *1031. Examination of witnesses to be in presence of defendant.*
" *1032. Examination of defendant's witnesses.*
" *1033. Exclusion and separation of witnesses.*
" *1034. Who may be present at the examination.*
" *1035. Testimony, how taken and authenticated.*
" *1036. Testimony, by whom and how kept.*
" *1037. Defendant, when and how discharged.*
" *1038. When and how to be committed.*
" *1039. Order for commitment.*
" *1040. Order for bail on commitment.*
" *1041. Commitment, how made and to whom delivered.*
" *1042. Form of commitment.*
" *1043. Undertaking of witnesses to appear.*
" *1044. Security for the appearance of witnesses.*
" *1045. Infants and married women may be required to give security.*
" *1046. Witnesses to be committed on refusal to give security for their appearance. How discharged.*
" *1047. Witness unable to give security may be conditionally examined. Not applicable to prosecutor or accomplice.*
" *1048. Magistrate to return testimony, etc., to the court.*
" *1049. Waiver of examination.*

SEC. 1025. When the defendant is brought before the magistrate upon an arrest, either with or without warrant, on a charge of having committed a public offense, the magistrate must immediately inform him of the charge against him, which charge must be by complaint as provided in this Code, made before the examination in this chapter provided for, and of his right to the aid of counsel in every stage of the proceedings.

SEC. 1026. The magistrate must allow the defendant a reasonable time to send for counsel, and postpone the examination for that purpose; and must, upon request of the defendant, require a peace officer to take a message to any counsel, in the township or city, the defendant may name. The officer must, without delay and without fee, perform that duty.

SEC. 1027. If the defendant requires the aid of counsel, the magistrate must, immediately after the appearance of counsel, or if, after waiting a reasonable time therefor, none appears, proceed to examine the case.

SEC. 1028. A magistrate may adjourn an examination or trial pending before him from time to time, as occasion may require, not exceeding ten days at one time, without the consent of the person charged, and to the same or a different place in the county, as he may think proper; and in such case if the party is charged with a capital offense, he must be committed in the meantime, otherwise the magistrate must commit the defendant for examination, admit him to bail, or discharge him from custody upon the deposit of money, as provided in this Code, as security for his appearance at the time to which the examination is postponed.

SEC. 1029. The commitment for examination is made by an indorsement, signed by the magistrate on the warrant of arrest, to the following effect: "The within named A. B. having been brought before me under this warrant, is committed for examination to the sheriff of ———." If the sheriff is not present, the defendant may be committed to the custody of a peace officer.

SEC. 1030. The magistrate must issue subpoenas for witnesses within the State required either for the prosecution or for the defense.

SEC. 1031. The witnesses must be examined in the presence of the defendant, and may be cross-examined in his behalf.

SEC. 1032. When the examination of witnesses on the part of the State is closed, any witnesses the defendant may produce must be sworn and examined.

SEC. 1033. While a witness is under examination, the magistrate may exclude all witnesses who have not been examined. He may also cause the witnesses to be kept separate, and to be prevented from conversing with each other until they are all examined.

SEC. 1034. The magistrate must also, upon the request of the defendant, exclude from the examination every person except his clerk, the prosecutor and his counsel, the attorney-general, the county attorney of the county, the defendant and his counsel, and the officer having the defendant in custody.

SEC. 1035. The testimony of each witness, in case of homicide, must be reduced to writing, as a deposition, by the magistrate, or under his direction; and in other cases upon demand of the prosecuting attorney, or the defendant, or his counsel.

The deposition or testimony of the witness must be authenticated in the following form:

1. It must state the name of the witness, his place of residence, and his business or profession.

2. It must contain the questions put to the witness, and his answers thereto, each answer being distinctly read to him as it is taken down, and being corrected or added to until it conforms to what he declares is the truth.

3. If a question put be objected to on either side and overruled, or the witness declines answering it, that fact, with the ground on which the question was overruled or the answer declined, must be stated.

4. The deposition must be signed by the witness, or if he refuses to sign it, his reason for refusing must be stated in writing as he gives it.

5. It must be signed and certified by the magistrate when reduced to writing by him, or under his direction, and certified as being a correct statement of such testimony and proceedings in the case, and shall be prima facie a correct statement of such testimony and proceedings.

SEC. 1036. The magistrate or his clerk must keep the testimony taken on the examination, until it is returned to the proper court; and must not permit such testimony to be examined or copied by any person except a judge of a court having jurisdiction of the offense, or authorized to issue writs of habeas corpus, the attorney-general, county attorney, or other prosecuting attorney, and the defendant and his counsel.

SEC. 1037. If, after hearing the proofs, it appears either that no public offense has been committed or that there is not sufficient cause to believe the defendant guilty of a public offense, the magistrate must order the defendant discharged, by an indorsement on the testimony signed by him, to the following effect: "There being no sufficient cause to believe the within named A. B. guilty of the offense within mentioned, I order him to be discharged."

SEC. 1038. If, however, it appears from the examination that a public offense has been committed, and there is sufficient cause to believe the defendant guilty thereof, the magistrate must make or indorse on the testimony an order, signed by him, to the following effect: "It appearing to me that the offense in the within testimony mentioned, (or any offense, according to the fact, stating generally the nature thereof) has been committed, and that there is sufficient cause to believe the within named A. B. guilty thereof, I order that he be held to answer to the same."

SEC. 1039. If the offense is not bailable, the following words must be added to the indorsement: "And he is hereby committed to the sheriff of the county of ——."

SEC. 1040. If the offense is bailable, and the defendant is admitted to bail the following words must be added to the order: "And that he be admitted to bail in the sum of ——— dollars, and is committed to the sheriff of the county of ——— until he gives such bail."

SEC. 1041. If the magistrate order the defendant to be committed, he must make out a commitment, signed by him, with his name of office, and deliver it, with the defendant, to the officer to whom he is committed, or, if that officer is not present, to a peace officer, who must deliver the defendant into the proper custody, together with the commitment.

SCE. 1042. The commitment must be to the following effect:

County of———(as the case may be).

The State of Montana to the sheriff of the county of———:

An order having been this day made by me, that A. B. be held to answer upon a charge of (stating briefly the nature of the offense, and giving as near as may be, the time when and the place where the same was committed), you are hereby commanded to receive him into your custody and detain him until he is legally discharged.

Dated this———day of———, eighteen———.

SEC. 1043. On holding the defendant to answer, the magistrate may take from each of the material witnesses examined before him on the part of the State, a written undertaking, to the effect that he will appear and testify at the court to which the complaint and statements are to be sent, or that he will forfeit the sum of five hundred dollars.

SEC. 1044. When the magistrate or judge of the court in which the action is pending is satisfied, by proof on oath, that there is reason to believe that any such witness will not appear and testify unless security is required, he may order the witness to enter into a written undertaking, with sureties, in such sum as he may deem proper, for his appearance as specified in the preceding section.

SEC. 1045. When any married woman or minor is a material witness, any other person may be allowed to give an undertaking for the appearance of such witness; or the magistrate may, in his discretion, take the undertaking of such married woman or minor in a sum not exceeding fifty dollars, which is valid and binding in law, notwithstanding the disability of coverture or minority.

SEC. 1046. Any witness required to enter into an undertaking, either with or without sureties must, if he refuse, be committed to prison by the magistrate, there to remain until the deposition of such witness can be taken. After the deposition is taken the witness must be immediately discharged.

SEC. 1047. Such deposition must be taken in the presence of the accused and his counsel, or without their presence if they fail to attend the examination after reasonable notice of the time and place thereof, upon written notice to the defendant or his attorney, or the attorney prosecuting, as the case may be, and the deposition so taken must be transmitted to the clerk of the District Court and may be used on the trial in the the District Court subject to objections as to the materiality or competency of the evidence as in case of other depositions, if the witness be dead or absent from the State at the time of the trial.

SEC. 1048. When a magistrate has discharged a defendant, or has held him to answer, he must return, without delay, to the clerk of the court at which the defendant is required to appear, the complaint, testimony and warrant, if any, and all undertakings of bail, or for the appearance of witnesses, taken by him.

SEC. 1049. A defendant brought before a committing magistrate may waive a preliminary examination. In such cases the magistrate must make a minute of such waiver, and make the same order as though he had found that there was probable cause for believing the defendant guilty of the offense charged.

TITLE IV.

PROCEEDINGS ON INFORMATION AND INDICTMENT.

Chapter I. Preliminary Provisions.
" *II. The Information.*
" *III. Formation of the Grand Jury.*
" *IV. Powers and Duties of the Grand Jury.*

CHAPTER I.

PRELIMINARY PROVISIONS.

Section 1055. Offenses, how prosecuted.
" *1056. What by accusation or information.*
" *1057. Indictments and accusations, in what court found.*

SEC. 1055. All public offenses triable in the District Courts must be prosecuted by indictment or information, except as provided in the next section.

SEC. 1056. When the proceedings are had for the removal of district, county, municipal, or township officers, they may be commenced by an accusation or information, in writing, as provided in Sections 913 and 927 of this Code.

SEC. 1057. All accusations, informations, or indictments, against district, county, municipal, and township officers, must be found or filed in the District Court.

CHAPTER II.

THE INFORMATION.

Section 1060. Information to be filed.
" *1061. Duty of county attorney.*
" *1062. Duty of court when county attorney does not file information.*
" *1063. Information may be amended.*
" *1064. Indorsement on information.*

SEC. 1060. When the defendant has been examined and committed, or admitted to bail as provided in this Code, or upon leave of court, the county attorney must, within thirty days after the delivery of the complaint, warrant and testimony to the proper District Court, or after such leave, file in such court an information charging the defendant with the offense for which he is held to answer, or any other offense disclosed by the testimony.

SEC. 1061. The county attorney of the proper county must inquire into and make full examination of all facts and circumstances, touching the commission of any public offense, whenever the offender has been held to answer, and must file an information setting forth the crime committed according to the facts ascertained, on such examination, and from the written testimony taken thereon, whether it be the offense charged in the complaint on which the examination was held or not.

SEC. 1062. If the county attorney determines in any such case that an information ought not to be filed he must make, subscribe, and file with the clerk of the court a statement in writing containing his reasons in fact and in law for not filing an information in such case; such statement must be filed at and during the term or session of the court to which the offender is held to appear for trial; and in such case the court must examine such statement together with the evidence filed in the case, and if upon such examination, the court is not satisfied with such statement, the county attorney must be directed and required by the court to file the proper information and bring the case to trial.

SEC. 1063. An information may be amended in matter of substance or form at any time before the defendant pleads, without leave of court. The information may be amended at any time thereafter and on the trial as to all matters of form, at the discretion of the court, where the same can be done without prejudice to the rights of the defendant. No amendment must cause any delay of the trial unless for good cause shown by affidavit.

SEC. 1064. The county attorney must indorse upon the informasion at the time of filing the same, the names of the witnesses for the State, if known.

CHAPTER III.

FORMATION OF THE GRAND JURY.

Section 1068. When the grand jury may be drawn.
" *1069. Number of grand jury.*
" *1070. Who may challenge the panel or an individual juror.*
" *1071. Cause of challenge to panel.*
" *1072. Cause of challenge to an individual juror.*
" *1073. Manner of making and trying challenges.*
" *1074. Decision upon challenges.*
" *1075. Effect of allowing a challenge to a panel.*
" *1076. Effect of allowing a challenge to an individual juror.*
" *1077. Same.*
" *1078. Appointment of a foreman.*
" *1079. Oath of grand jurors.*
" *1080. Charge of the court.*
" *1081. Retirement of the grand jury—Discharge of.*
" *1082. Special grand jury.*

SEC. 1068. A grand jury must only be drawn and summoned when the district judge in his discretion considers a grand jury necessary and shall so order.

SEC. 1069. A grand jury must consist of seven persons, of whom five must concur to find an indictment.

SEC. 1070. The State or a person whose case will come before a grand jury, may challenge the panel of a grand jury, or an individual juror.

SEC. 1071. A challenge to the panel may be interposed for the following causes:

1. That the grand jurors were not selected, drawn, or summoned according to law.

SEC. 1072. A challenge to an individual grand juror may be interposed for one or more of the following causes only:

1. That he is a minor.
2. That he is an alien.
3. That he is insane.
4. That he is a prosecutor upon a charge against the defendant.
5. That he is a witness on the part of the prosecution, and has been served with process or bound by an undertaking as such.
6. That a state of mind exists on his part in reference to the case, or to either party, which will prevent him from acting impartially and without prejudice to the substantial rights of the party challenging; but no person is disqualified as a juror by reason of having formed or expressed an opinion upon the matter or cause to be submitted to such jury, founded upon public rumor, statements in public journals, or common

notoriety, provided it satisfactorily appears to the court, upon his declaration, under oath, or otherwise, that he can and will, notwithstanding such opinion, act impartially and fairly upon the matters to be submitted to him.

SEC. 1073. The challenges mentioned in the last three sections may be oral or in writing, and must be tried by the court.

SEC. 1074. The court must allow or disallow the challenge, and the clerk must enter its decision upon the minutes.

SEC. 1075. If a challenge is allowed to the panel of the grand jury, the court must discharge the same, and order a new grand jury to be summoned in accordance with law.

SEC. 1076. If the challenge is allowed to an individual juror for the first, second, or third causes, such person must be excused from the jury, and if there be not enough jurors to complete the panel left, the court must complete the same.

SEC. 1077. When a challenge is allowed to any juror for either the fourth or fifth causes therefor, the court must charge the juror that he must not act as a grand juror in any manner in the investigation of the charge against the person challenging; and that any violation of this order will be considered a contempt of court.

SEC. 1078. From the persons summoned to serve as grand jurors and appearing, the court must appoint a foreman. The court must also appoint a foreman when the person already appointed is excused or discharged before the grand jury is dismissed.

SEC. 1079. When the panel of the grand jury is completed, the following oath or affirmation, in substance, must be administered to them: "You, and each of you, do solemnly swear (or affirm) that you will diligently inquire into, and true presentment make, of all public offenses against the laws of this State, committed or triable by indictment in this county, of which you have or can obtain legal advice. You will present no one through hatred, malice, or ill will, nor leave any unpresented through fear, favor, or affection, or for any reward, or the promise or hope thereof; but in all your presentments your will present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding, so help you God."

SEC. 1080. The grand jury being impanneled and sworn, must be charged by the court. In doing so, the court must give them such information as it may deem proper, or as is required by law, as to their duties.

SEC. 1081. The grand jury must then retire to a private room, and inquire into the offenses cognizable by them. On the completion of the business before them, they must be discharged by the court; but, whether the business is completed or not, they are discharged by the final adjournment of the court, or by order of the court.

SEC. 1082. If an offense is committed during the sitting of the court, after the discharge of a grand jury, the court may, in its discretion, require the county attorney to file an information, or may direct an order to be entered that the sheriff summon another grand jury. Such grand jury must be drawn and summoned as in other cases.

CHAPTER IV.

POWERS AND DUTIES OF GRAND JURY.

Section 1087. Powers of grand jury.
" 1088. Foreman may administer oaths.
" 1089. Evidence receivable before the grand jury.
" 1090. Grand jury not bound to hear evidence for the defendant.
" 1091. Degree of evidence to warrant indictment.
" 1092. Grand jurors must declare their knowledge as to commission of public offense.
" 1093. Must inquire into cases of persons imprisoned, etc.
" 1094. Entitled to access to public prison, etc.
" 1095. When and from whom they may ask advice, and who may be present during their sessions.
" 1096. Secrets of grand jury to be kept, except, etc.
" 1097. Grand juror not to be questioned for his conduct, except, etc.
" 1098. To examine books of county officers.

SEC. 1087. The grand jury must inquire, under the direction of the court, into all public offenses committed and triable by indictment within the county, and return to the court any indictment found.

SEC. 1088. The foreman may administer an oath to any witness appearing before the grand jury.

SEC. 1089. In the investigation of a charge for the purpose of an indictment, the grand jury must receive no other evidence than such as is given by witnesses produced and sworn before them, or furnished by legal documentary evidence. The grand jury must receive none but legal evidence, and the best evidence in degree, to the exclusion of hearsay or secondary evidence.

SEC. 1090. The grand jury is not bound to hear evidence for the defendant, but may do so, and it is their duty to weigh all the evidence submitted to them, and when they have reason to believe that other evidence within their reach will explain away the charge, they should order such evidence to be produced, and for that purpose may require the county attorney to issue process for the witnesses.

SEC. 1091. The grand jury ought to find an indictment when all the evidence before them, taken together, if unexplained or uncontradicted, would, in their judgment, warrant a conviction by a trial jury.

SEC. 1092. If a member of a grand jury knows, or has reason to believe, that a public offense, triable by indictment within the county has been committed, he must declare the same to his fellow jurors, who must thereupon investigate the same.

SEC. 1093. The grand jury must inquire into the case of every person imprisoned in the jail of the county on a criminal charge, and not indicted, or against whom an information has not been filed; into the condition and management of the public prisons in the county, and into the willful and corrupt misconduct in office, of public officers of every description, within the county.

SEC. 1094. The grand jury is entitled to free access, at all reasonable times, to the public prisons, and to an examination, without charge, of all public records within the county.

SEC. 1095. The grand jury may, at all reasonable times, ask the advice of the court, or the judge thereof, or of the county attorney; but unless such advice is asked, the judge of the court must not be present during the sessions of the grand jury. The county attorney of the county may at all times, appear before the grand jury for the purpose of giving information or advice relative to any matter cognizable by them, and may interrogate witnesses before them whenever they or he thinks it necessary; but no other person is permitted to be present during the sessions of the grand jury except the members and witnesses actually under examination, and no person must be permitted to be present during the expression of their opinions or giving their votes upon any matter before them.

SEC. 1096. Every member of the grand jury must keep secret whatever he himself or any other grand juror may have said, or in what manner he or any other grand juror may have voted on a matter before them; but may, however, be required by any court to disclose the testimony of a witness examined before the grand jury, for the purpose of ascertaing whether it is consistent with that given before the court, or to disclose the testimony given before them by any person, upon a charge against such person for perjury in giving his testimony, or upon trial therefor.

SEC. 1097. A grand juror cannot be questioned for anything he may say, or any vote he may give in the grand jury relative to a matter legally pending before the jury, except for a perjury of which he may have been guilty, in making an accusation or giving testimony to his fellow jurors.

SEC. 1098. It is the duty of the grand jury, whenever summoned, to make a complete examination of the books, records, and accounts of all the officers of the county, and especially those pertaining to the revenue, and report thereon; and if, in their judgment, the services of an expert are necessary, the grand jury has power to employ one at an agreed compensation not to exceed five dollars per day, payable as other county charges. The judge, upon the impanelment of a grand jury, must charge them especially as to their duties under this section.

TITLE V.

THE INDICTMENT AND INFORMATION.

Chapter I. Finding and presentment of indictment.
" *II. Rules of pleadings and form of the indictment and information.*

CHAPTER I.

FINDING AND PRESENTMENT OF THE INDICTMENT.

Section 1105. Indictment must be found by five jurors, indorsed, etc.
" *1106. If not found.*
" *1107. Effect of dismissal.*
" *1108. Names of witnesses inserted at foot of indictment.*
" *1109. Indictment, how presented and filed.*
" *1110. Indictment to be signed by prosecuting attorney and foreman.*
" *1111. Warrant to issue.*
" *1112. Indorsement of bail.*

SEC. 1105. An indictment cannot be found without the concurrence of at least five grand jurors. When so found it must be indorsed, "A true bill," and the indorsement must be signed by the foreman of the grand jury.

SEC. 1106. When there is not a concurrence of five grand jurors in finding an indictment, the foreman must certify, under his hand, that no true bill was found.

SEC. 1107. The dismissal of the charge does not prevent its resubmission to a grand jury as often as the court may direct. But without such direction it cannot be resubmitted, nor can an information be filed.

SEC. 1108. When an indictment is found, the names of the witnesses examined before the grand jury must be inserted at the foot of the indictment, or indorsed thereon, before it is presented to the court, also the name of the prosecuting witness as such; but no such indictment must be quashed for want of such indorsement if the indorsement is made before the motion to quash is disposed of.

SEC. 1109. An indictment, when found by the grand jury, must be presented by their foreman, in their presence, to the court, and must be filed with the clerk.

SEC. 1110. An indictment must be signed by the attorney prosecuting; and when the grand jury returns any indictment into court, the judge must examine it; and if the foreman has neglected to indorse it, "A true bill," with his name signed thereto, or if the attorney prosecuting has neglected to sign his name, the court must cause the foreman to indorse, or the attorney prosecuting to sign it, as the case may require, in the presence of the grand jury.

SEC. 1111. When an indictment is found against a defendant, a warrant must issue for his arrest, and he must be immediately brought before the court, unless the court order otherwise.

SEC. 1112. If the offense is bailable, the court may indorse on the back of the warrant the amount in which the defendant is to be held, or admitted to bail, pending the action; or he may order the clerk to enter the amount in which the defendant is admitted to bail, in the minutes of the court, and then the clerk must indorse the amount of the warrant.

CHAPTER II.

RULES OF PLEADING AND FORM OF THE INFORMATION AND INDICTMENT.

Section 1117. Form of, and rules of pleading.
" *1118. First pleading by the State is indictment, or information.*
" *1119. Indictment, or information, what to contain.*
" *1120. Form of.*
" *1121. It must be direct and certain.*
" *1122. When defendant is indicted by fictitious name, etc.*
" *1123. Must charge but one offense and in one form, except where it may be committed by different means.*
" *1124. Statement as to time when offense was committed.*
" *1125. Statement as to person injured or intended to be.*
" *1126. Construction of words used.*
" *1127. Words used in a statute need not be strictly followed.*
" *1128. Indictment or information, when sufficient.*
" *1129. Not insufficient for defect of form not tending to prejudice defendant.*
" *1130. Presumptions of law, etc., need not be stated.*
" *1131. Judgments, etc., how pleaded.*
" *1132. Private statutes, how pleaded.*
" *1133. Pleading for libel.*

Section 1134. Pleading for forgery, where instrument has been destroyed or withheld by defendant.
" *1135. Pleading for perjury or subornation of perjury.*
" *1136. Pleading for larceny or embezzlement.*
" *1137. Pleading for selling, exhibiting, etc., lewd and obscene books.*
" *1138. Indictment against several, one or more may be acquitted.*
" *1139. Distinction between accessory before the fact, and principal abrogated.*
" *1140. Indictment against accessory.*
" *1141. Accessory may be indicted and tried, though principal has not been.*
" *1142. Record of indictment or information.*
" *1143. No disclosure prior to arrest.*
" *1144. Of what offense a defendant may be convicted.*
" *1145. Allegation as to partnership property.*
" *1146. Amendment allowed on trial, when.*
" *1147. Trial to proceed.*
" *1148. Effect of verdict.*

SEC. 1117. All the forms of pleading in criminal actions, and the rules by which the sufficiency of pleadings is to be determined are those prescribed by this Code.

SEC. 1118. The first pleading on the part of the State is either an indictment or an information.

SEC. 1119. The indictment or information must contain:

1. The title of the action, specifying the name of the court in which the same is filed, and the names of the parties.

2. A statement of the facts constituting the offense, in ordinary and concise language, and in such manner as to enable a person of common understanding to know what is intended.

SEC. 1120. It may be substantially in the following form: The State of Montana against A. B. In the District Court of the——district in and for the county of——, the——day of——A. D. eighteen——. A. B. is accused by the grand jury of the county of——, by this indictment, (or by the county attorney by this information) of the crime of (giving its legal appellation, such as murder, arson, or the like, or designating it as felony or misdemeanor), committed as follows: The said A. B., on the——day of——, A. D. eighteen——, at the county of——, (here set forth the act or omission charged as an offense) contrary to the form, force and effect of the statute in such case made and provided, and against the peace and dignity of the State of Montana.

SEC. 1121. The indictment or information must be direct and certain, as it regards:

1. The party charged.
2. The offense charged.

3. The particular circumstances of the offense charged, when they are necessary to constitute a complete offense.

SEC. 1122. When a defendant is charged by a fictitious or erroneous name, and in any stage of the proceedings his true name is discovered, it must be inserted in the subsequent proceedings, referring to the fact of his being charged by the name mentioned in the indictment or information.

SEC. 1123. The indictment or information must charge but one offense, but the same offense may be set forth in different forms under different counts, and when the offense may be committed by the use of different means, the means may be alleged in the alternative in the same counts.

SEC. 1124. The precise time at which the offense was committed, need not be stated in the indictment or information, but it may be alleged to have been committed at any time before finding or filing thereof, except where the time is a material ingredient in the offense.

SEC. 1125. When an offense involves the commission of, or attempt to commit, a private injury, and is described with sufficient certainty in other respects to identify the act, an erroneous allegation as to the person injured, or intended to be injured, is not material.

SEC. 1126. The words used in an indictment or information, are construed in their usual acceptance in common language, except such words and phrases as are defined by law, which are construed according to their legal meaning.

SEC. 1127. Words used in a statute to define a public offense need not be strictly pursued in the indictment or information, but other words conveying the same meaning may be used.

SEC. 1128. The indictment or information is sufficient, if it can be understood therefrom:

1. That it is entitled in a court having authority to receive it, though the name of the court be not stated.

2. If an indictment, that it was found by a grand jury of the county in which the court was held; or if an information, that it was subscribed and presented to the court by the county attorney of the county in which the court was held.

3. That the defendant is named, or, if his name cannot be discovered, that he is described by a fictitious name, with a statement that his true name is to the jury or county attorney, as the case may be, unknown.

4. That the offense was committed at some place within the jurisdiction of the court, except where the act, though done without the local jurisdiction of the county, is triable therein.

5. That the offense was committed at some time prior to the time of finding the indictment or filing of the information.

6. That the act or omission charged as the offense, is clearly and distinctly set forth in ordinary and concise language, with-

out repetition, and in such manner as to enable a person of common understanding to know what is intended.

7. That the act or omission charged as the offense, is stated with such a degree of certainty, as to enable the court to pronounce judgment upon a conviction, according to the right of the case.

SEC. 1129. No indictment or information is insufficient, nor can the trial, judgment, or other proceedings thereon be affected by reason of any defect or imperfection in matter of form which does not tend to the prejudice of a substantial right of the defendant upon its merits.

SEC. 1130. Neither presumptions of law, nor matters of which judicial notice is taken, need be stated in an indictment or information.

SEC. 1131. In pleading a judgment or other determination of, or proceeding before a court or officer of special jurisdiction, it is not necessary to state the facts constituting jurisdiction; but the judgment or determination may be stated as given or made, or the proceedings had. The facts constituting jurisdiction, however, must be established on the trial.

SEC. 1132. In pleading a private statute, or a right derived therefrom, it is sufficient to refer to the statute by its title and the day of its passage, and the court must thereupon take judicial notice thereof.

SEC. 1133. An indictment or information for libel, need not set forth any extrinsic facts for the purpose of showing the application to the party libeled, of the defamatory matter on which the indictment or information is founded; but it is sufficient to state generally, that the same was published concerning him, and the fact that it was so published must be established on the trial.

SEC. 1134. When an instrument which is the subject of an indictment or information for forgery, has been destroyed or withheld by the act or the procurement of the defendant, and the fact of such destruction or withholding is alleged in the indictment or information, and established on the trial, the misdescription of the instrument is immaterial.

SEC. 1135. In an indictment or information for perjury, or or subornation of perjury, it is sufficient to set forth the substance of the controversy or matter in respect to which the offense was committed, and in what court and before whom the oath alleged to be false was taken, and that the court, or person before whom it was taken, had authority to administer it, with proper allegations of the falsity of the matter on which the perjury is assigned; but the indictment or information need not set forth the pleadings, record, or proceedings with which the oath is connected, nor the commission or authority of the court or person before whom the perjury was committed.

SEC. 1136. In an indictment or information for the larceny or embezzlement of money, bank notes, certificates of stock, or valuable securities, or for a conspiracy to cheat or defraud a person of any such property, it is sufficient to allege larceny or embezzlement, or the conspiracy to cheat and defraud, to be of money, bank notes, certificates of stock, or valuable securities, without specifying the coin, number, denomination, or kind thereof.

SEC. 1137. An indictment or information for exhibiting, publishing, passing, selling, or offering to sell, or having in possession, with such intent, any lewd or obscene book, pamphlet, picture, print, card, paper, or writing, need not set forth any portion of the language used or figures shown upon such book, pamphlet, picture, print, card, paper, or writing; but it is sufficient to state generally the fact of the lewdness or obscenity thereof.

SEC. 1138. Upon an indictment or information against several defendants, any one or more may be convicted or acquitted.

SEC. 1139. The distinction between an accessory before the fact and a principal, and between principals in the first and second degree, in cases of felony, is abrogated; and all persons concerned in the commission of a felony, whether they directly commit the act constituting the offense, or aid and abet in its commission, though not present, must be prosecuted, tried, and punished as principals, and no other facts need be alleged in any indictment or information against such an accessory, than are required in an indictment or information against his principal.

SEC. 1140. An indictment or information against any accessory to any felony, may be found in any county where the offense of such accessory may have been committed, notwithstanding the principal offense may have been committed in another county, and the like proceeding may be had therein in all respects, as if the principal offense had been committed in the same county.

SEC. 1141. An accessory to the commission of a felony may be prosecuted, tried, and punished, though the principal may be neither prosecuted nor tried, and though the principal may have been acquitted.

SEC. 1142. Every indictment or information must be recorded by the clerk within five days after the same is filed, in a book to be kept for that purpose. The judge must compare the record with the original indictment or information, and certify the correctness thereof. In case the original indictment or information is lost or destroyed, the defendant may be tried upon a copy taken from the record, and certified by the clerk.

SEC. 1143. No grand juror, county attorney, clerk, judge, or other officer must disclose the fact that an indictment is found or an information filed until the defendant has been arrested, except any disclosure that may be necessarily incident to the issue and service of a warrant to arrest the defendant. A violation of this section may be punished as a misdemeanor by fine or imprisonment, or both.

SEC. 1144. Upon the trial of an indictment or information, the defendant may be convicted of the crime charged therein, or of a lesser degree of the same crime, or of any crime included in the crime charged, or of an attempt to commit the crime charged or an attempt to commit a lesser degree of the crime charged, or of an attempt to commit any crime included in the crime charged.

SEC. 1145. When any offense is committed upon, or in relation to, any personal property belonging to several partners or owners, the indictment or information for such offense is sufficient, if it allege such property to belong to any one or more of such partners or owners without naming them all.

SEC. 1146. Upon the trial of an indictment or information, when a variance between the allegation therein and the proof, in respect to time, or in the name or description of any place, person or thing, shall appear, the court may, in its judgment, if the defendant cannot be thereby prejudiced in his defense on the merits, direct the indictment or information to be amended, according to the proof, on such terms as to the postponement of the trial, to be had before the same or another jury, as the court may deem reasonable.

SEC. 1147. After such amendment, the trial, whenever the same shall be proceeded with, must proceed in the same manner and with the same consequences, as if no such variance had occurred.

SEC. 1148. A verdict and judgment which is given after the making of any such amendment, is of the same force and effect, as if the indictment or information had originally been found in its amended form.

TITLE VI.

PLEADINGS AND PROCEEDINGS AFTER INFORMATION OR INDICTMENT AND BEFORE THE COMMENCEMENT OF THE TRIAL.

Chapter I. *Arraignment of the defendant.*
" II. *Setting aside the indictment.*
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CHAPTER I.

ARRAIGNMENT OF THE DEFENDANT.

Section 1153. Defendant must be arraigned in the court where the indictment or information is filed or transferred.
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“ *1163. Defendant, if present when order made, to be committed; if not, warrant to issue.*
“ *1164. Right to counsel on arraignment.*
“ *1165. Compensation of counsel.*
“ *1166. Arraignment, how made.*
“ *1167. Proceedings on arraignment, when defendant is not indicted by his true name.*
“ *1168. Time allowed, and how defendant may answer on arraignment.*

SEC. 1153. When the indictment or information is filed, the defendant must be arraigned thereon before the court in which it is filed, unless the cause is transferred to some other county for trial.

SEC. 1154. If the indictment or information be for felony, the defendant must be personally present; but if for a misdemeanor, he may appear upon the arraignment by counsel.

SEC. 1155. When his personal appearance is necessary, if he is in custody, the court may direct, and the officer in whose custody he is, must bring him before it to be arraigned.

SEC. 1156. If the defendant has been discharged on bail, or has deposited money instead thereof, and does not appear to be arraigned when his personal attendance is necessary, the court, in addition to the forfeiture of the undertaking of bail or of money deposited, may direct the clerk to issue a warrant for his arrest.

SEC. 1157. The clerk on the application of the county attorney may, at any time after the order, whether the court is sitting or not, issue a warrant to one or more counties.

SEC. 1158. The warrant upon the indictment or information must, if the offense is a felony, be substantially in the following form:

In the District Court of the ——— District in and for the County of ———. The State ot Montana: To any sheriff, constable, marshal, or policeman in this State: An indictment having been found (or information filed) on the ——— day of ———, A. D. eighteen ———, in the District court of the county of ———, charging C. D. with the crime of ——— (designating it generally); you are, therefore, commanded forthwith to arrest the above named C. D., and bring him before that court, (or if the indictment and information has been sent to another court, then before that court, naming it,) to answer said indictment (or information); or if the court be not in session, that you deliver him into the custody of the sheriff of the county of ———.

Given under my hand, with the seal of said court affixed, this ——— day of ———, A. D. ———, Clerk.

[Seal].

SEC. 1159. The defendant, when arrested under a warrant for an offense not bailable, must be held in custody by the sheriff of the county in which the indictment is found or information filed, unless admitted to bail after an examination upon a writ of habeas corpus; but if the offense is bailable, there must be added to the body of the warrant a direction to the following effect: "Or, if he require it, that you take him before any magistrate in that county, or in the county in which you arrest him, that he may give bail to answer to the indictment, or information," and the court, upon directing it to issue, must fix the amount of bail, and an indorsement must be made thereon and signed by the clerk, to the following effect: "The defendant is to be admitted to bail in the sum of ——— dollars.

SEC. 1160. The warrant may be served in any county, in the same manner as a warrant of arrest, as provided in Chapter IV., Title III., Part II., of this Code.

SEC. 1161. If the defendant is brought before a magistrate of another county for the purpose of giving bail, the magistrate must proceed in respect thereto, in the same manner as if the defendant had been brought before him upon a warrant of arrest, and the same proceedings must be had thereon.

SEC. 1162. When the information is for a felony, and the defendant, before the filing thereof, has given bail for his appearance to answer the charge, the court to which the information is presented, or in which it is pending, may order the defendant to be committed to actual custody, unless he gives bail in an increased amount, to be specified in the order.

SEC. 1163. If the defendant is present when the order is made, he must be forthwith committed. If he is not present, a warrant must be issued and proceeded upon in the manner provided in this chapter.

SEC. 1164. If the defendant appear for arraignment without counsel, he must be informed by the court that it is his right to have counsel before being arraigned, and must be asked if he desires the aid of counsel. If he desires and is unable to employ counsel, the court must assign counsel to defend him.

SEC. 1165. Whenever, in a criminal action or proceeding, in the district court, an attorney-at-law defends a person charged with any offense, by order of the court, on the ground that the accused is unable to procure or employ counsel, the county in which such criminal action or proceeding may have arisen, is liable to pay such attorney for his services such sum as the judge certifies to be a reasonable compensation therefor, not to exceed, in any capital case, the sum of fifty dollars; in other cases of felony a sum not exceeding twenty-five dollars; and in all other cases a sum not exceeding ten dollars.

SEC. 1166. The arraignment must be made by the court, or by the clerk or county attorney under its direction, and consists in reading the indictment or information to the defendant and delivering to him a copy thereof, and of the indorsements thereon, including the list of witnesses, and asking him whether he pleads guilty or not guilty to the indictment or information.

SEC. 1167. When the defendant is arraigned, he must be informed that if the name by which he is prosecuted is not his true name, he must then declare his true name, or be proceeded against by the name in the indictment or information. If he gives no other name, the court may proceed accordingly; but if he alleges that another name is his true name, the court must direct an entry thereof in the minutes of the arraignment, and the subsequent proceedings on the information or indictment may be had against him by that name, referring also to the name by which he was first charged therein.

SEC. 1168. If, on the arraignment, the defendant requires it, he must be allowed a reasonable time, not less than one day, to answer the indictment or information. He may, in his answer to the arraignment, move to set aside, demur, or plead to the indictment or information.

CHAPTER II.

SETTING ASIDE THE INDICTMENT OR INFORMATION.

Section 1173. Indictment, when set aside on motion.

" *1174. Defendant waives objections, unless he makes the motion.*

" *1175. Motion, when heard—If denied or granted, what proceedidgs are to be had.*

" *1176. Effect of order for submission.*

" *1177. Order no bar to another prosecution.*

SEC. 1173. The indictment or information must be set aside by the court in which the defendant is arraigned, upon his motion, in either of the following cases: If it be an indictment—

1. Where it is not found, indorsed, and presented as prescribed in this Code.

2. When the names of the witnesses examined before the grand jury are not inserted at the foot of the indictment or indorsed thereon.

3. When a person is permitted to be present during the session of the grand jury, and when the charge embraced in the indictment is under consideration, except as provided in Section 1096.

4. On any ground which would have been good ground for challenge, either to the panel or to any individual grand juror.

If it be on information—

1. That leave to file the same had not been granted by the court.

2. That before the filing thereof the defendant had not been legally committed by a magistrate.

3. That it was not subscribed by the county attorney.

SEC. 1174. The motion to set aside the indictment or information must be in writing, subscribed by the defendant, or his attorney, and must specify clearly the ground of objection to the indictment or information, and such motion must be made before defendant demurs or pleads, or the grounds of the objection are waived.

SEC. 1175. The motion must be heard at the time it is made, unless, for cause, the court postpones the hearing to another time. If the motion is denied, the defendant must immediately answer the indictment or information, either by demurring or pleading thereto. If the motion is granted, the court must order that the defendant, if in custody, be discharged therefrom, or, if admitted to bail, that his bail be exonerated, or, if he has deposited money instead of bail, that the same be refunded to him, unless it directs that the case be resubmitted to the same or another grand jury, or that another or amended information be filed by the county attorney.

SEC. 1176. If the court directs the case to be resubmitted, or another or amended information be filed, the defendant, if already in custody, must so remain, unless he is admitted to bail; or, if already admitted to bail, or money has been deposited instead therefor, the bail or money is to be answerable for the appearance of the defendant to answer a new indictment or information; and, unless a new indictment is found, or another or an amended information filed within thirty days from the date of the order, the court must make the order discharging the defendant, as prescribed by the preceding section.

SEC. 1177. An order to set aside an indictment or information, as provided in this chapter, is no bar to a future prosecution for the same offense.

CHAPTER III.

DEMURRER.

Section 1183. Pleading on part of defendant.
" 1184. Demurrer or plea, when put in.
" 1185. Grounds of demurrer.
" 1186. Demurrer, how put it, and its form.
" 1187. When heard.
" 1188. Judgment on demurrer.
" 1189. If allowed, bar to another prosecution; when.
" 1190. If resubmission not ordered, defendant discharged, etc.
" 1191. Proceedings, if submission ordered.
" 1192. Proceedings, if demurrer is disallowed.
" 1193. Objections, forming ground of demurrer, when taken.

SEC. 1183. The only pleading on the part of the defendant is either a demurrer or a plea.

SEC. 1184. Both the demurrer and plea must be put in, in open court, either at the time of the arraignment or at such other time as may be allowed to the defendant for that purpose.

SEC. 1185. The defendant may demur to the indictment or information, when it appears upon the face thereof, either—

1. If an indictment, that the grand jury by which it was found had no legal authority to inquire into the offense charged, by reason of its not being within the legal jurisdiction of the county; or, if an information, that the court has no jurisdiction of the offense charged therein.

2. That it does not substantially conform to the requirement of sections 1119, 1120 and 1121.

3. That more than one offense is charged.

4. That the facts stated do not constitute a public offense.

5. That it contains any matter, which if true, would constitute a legal justification or excuse of the offense charged, or other legal bar to the prosecution.

SEC. 1186. The demurrer must be in writing, signed either by the defendant or his counsel, and filed. It must distinctly specify the grounds of objection to the indictment or information, or it must be disregarded.

SEC. 1187. Upon the demurrer being filed, the argument upon the objections presented thereby must be heard, either immediately or at such time as the court may appoint.

SEC. 1188. Upon considering the demurrer, the court must give judgment, either allowing or disallowing it, and an order to that effect must be entered upon the minutes.

SEC. 1189. If the demurrer is allowed, the judgment is final upon the indictment or information demurred to, and is a bar to another prosecution for the same offense, unless the court, being of the opinion that the objection on which the demurrer is allowed may be avoided in a new indictment, or another or an amended information, directs the case to be submitted to another grand jury, or directs another or an amended information to be filed.

SEC. 1190. If the court does not permit the information to be amended, nor direct that another information be filed, or that the case be resubmitted, as provided in the preceding section, the defendant, if in custody, must be discharged, or if admitted to bail, his bail is exonerated, or if he has deposited money instead of bail, the money must be refunded to him.

SEC. 1191. If the court directs that the case be resubmitted, or that another or an amended information be filed, the same proceedings must be had thereon as are prescribed in Sections 1175 and 1176.

SEC. 1192. If the demurrer is disallowed, the defendant must plead forthwith, or at such time as the court may direct.

SEC. 1193. When the objections mentioned in Section 1185 appear on the face of the indictment or information, they can only be taken by demurrer, except that the objection to the jurisdiction of the court over the subject of the indictment or information, or that the facts stated do not constitute a public offense, may be taken at the trial, under the plea of not guilty, or after the trial, in arrest of judgment.

CHAPTER IV.

PLEA.

Section 1198. The different kinds of pleas.
" 1199. Plea, how put in, and its form.
" 1200. Plea of guilty, how put in, and when withdrawn.
" 1201. What plea of not guilty puts in issue.
" 1202. What may be given in evidence under plea of not guilty.
" 1203. What is not a former acquittal.
" 1204. What is a former acquittal.
" 1205. Conviction or acquittal for a higher offense, effect of.
" 1206. Defendant refusing to answer; plea of not guilty.

SEC. 1198. There are four kinds of pleas to an indictment or information.

A plea of—

1. Guilty.
2. Not guilty.
3. A former judgment of conviction or acquittal of the offense charged, which may be pleaded either with or without the plea of not guilty.
4. Once in jeopardy.

SEC. 1199. Every plea must be oral, and entered upon the minutes of the court in substantially the following form:

1. If the defendant plead guilty: "The defendant pleads that he is guilty of the offense charged."

2. If he plead not guilty: "The defendant pleads that he is not guilty of the offense charged."

3. If he plead a former conviction or acquittal: "The defendant pleads that he has already been convicted (or acquitted) of the offense charged by the judgment of the court of ——— (naming it), rendered at ——— (naming the place), on the ——— day of ———.

4. If he plead once in jeopardy: "The defendant pleads that he has been once in jeopardy for the offense charged (specifying the time, place, and court).

SEC. 1200. A plea of guilty can be put in by the defendant himself only in open court, unless upon indictment or information against a corporation or for a misdemeanor, in which case it may be put in by counsel. The court may, at any time before judgment, upon a plea of guilty, permit it to be withdrawn, and a plea of not guilty substituted.

SEC. 1201. The plea of not guilty puts in issue every material allegation of the indictment or information.

SEC. 1202. All matters of fact tending to establish a defense, other than that specified in the third and fourth subdivisions of Section 1198, may be given in evidence under the plea of not guilty.

SEC. 1203. If the defendant was formerly acquitted on the ground of variance between the indictment or information and the proof, or the indictment or information was dismissed upon an objection to its form or substance, or in order to hold the defendant for a higher offense, without a judgment of acquittal, it is not an acquittal of the same offense.

SEC. 1204. Whenever the defendant is acquitted on the merits, he is acquitted of the same offense, notwithstanding any defects in form or substance in the indictment or information on which the trial was had.

SEC. 1205. When the defendant is convicted or acquitted, or has been once placed in jeopardy upon an indictment or information, the conviction, acquittal, or jeopardy, is a bar to another indictment or information for the offense charged in the former, or for an attempt to commit the same, or for an offense necessarily included therein, of which he might have been convicted under that indictment or information.

SEC. 1206. If the defendant refuse to answer the indictment or information by demurrer or plea, a plea of not guilty must be entered.

CHAPTER V.

INFORMATION OR INDICTMENT AGAINST A JUDGE.

Section 1208. Indictment or information against a judge.

SEC. 1208. When an indictment is found, or an information filed in a District Court against a judge thereof, a certificate of that fact must be transmitted by the clerk to the Governor, who shall thereupon designate and direct a judge of the District Court of another district to preside at the trial of such indictment or information, and hear and determine all pleas and motions affecting the defendant thereunder before and after judgment.

CHAPTER VI.

CHANGE OF PLACE OF TRIAL.

Section 1210. What petition to contain.
" 1211. Petition how supported.
" 1212. Application when made.
" 1213. Order of court or judge.
" 1214. Application on part of State.
" 1215. When change of place of trial not granted.
" 1216. Order of removal, how entered.
" 1217. Custody of defendant.
" 1218. Trial.
" 1219. Order as to witnesses.
" 1220. Failure of duty by clerk.
" 1221. Change of place of trial as to other defendants.

SEC. 1210. A defendant in an indictment or information may be awarded a change of place of trial upon his petition, on oath, (or upon the oath of some creditable person,) setting forth that he has reason to believe that he will not receive a fair trial in the court in which such indictment or information may be pending, which petition shall state the facts upon which the same is based, for—

1. That the judge is interested or prejudiced; or,
2. Is of kin to or has been counsel for either party; or,
3. That the prosecuting witness or the county attorney has an undue influence over the minds of the people of the county where the indictment or information is pending; or,
4. That the people of the county are so prejudiced against the defendant that he cannot have a fair trial; or;
5. That it is impossible to obtain a jury in the county that has not formed an opinion, as to the guilt or innocence of the defendant, such as would disqualify them as jurors.

SEC. 1211. The petition may be supported either by affidavits or oral testimony.

SEC. 1212. A defendant may apply to the court or to a judge in vacation for a change of place of trial, upon reasonable notice to the county attorney.

SEC. 1213. The court or judge, being satisfied that good cause exists therefor, may award a change of place of trial to some county where the causes complained of do not exist. But there shall be but one change of place of trial.

SEC. 1214. The State may have a change of place of trial for any of the causes for which the defendant may obtain the same. The petition therefor must be made by the county attorney, or attorney prosecuting, to the court or judge, supported by affidavits or oral testimony.

SEC. 1215. Change of place of trial must not be granted after the first term or session at which the party applying for the same might have been heard, unless the cause shall have arisen subsequent to such term or session. If one or more trials be had, and a new trial is necessary, either by reason of the discharge of a jury without a verdict, or of the granting of a new trial, the removal may be allowed at any time before the new trial.

SEC. 1216. The order of removal, whether made by the court or judge, must be entered upon the minutes, and the clerk must immediately make out and transmit to the court to which the action is removed, a certified copy of the order of removal, and of the record, pleadings and proceedings in the action, including the undertaking for the appearance of the defendant and of the witnesses.

SEC. 1217. If the defendant is in custody, the order must direct his removal, and he must be forthwith removed by the sheriff of the county where he is imprisoned to the custody of the sheriff of the county to which the action is removed.

SEC. 1218. The court to which the action is removed must proceed to trial and judgment therein as if the action had been commenced in such court. If it is necessary to have any of the original pleadings or other papers before such court, the court from which the action is removed must at any time, upon application of the county attorney or of the defendant, order such papers or pleadings to be transmitted by the clerk, a certified copy thereof being retained.

SEC. 1219. If the order of removal is made at a term or session of the court it is notice to every person who has entered into an undertaking to appear at such term or session. In other cases the witnesses must be subpœnæd as provided in this Code.

SEC. 1220. If the clerk of the District Court neglects or refuses to perform any duty in relation to the removal of a cause, he forfeits a sum not exceeding five hundred dollars, to be recovered by an action in the name of and for the use of the State or the person injured.

SEC. 1221. If there are several defendants in an indictment or information, and the place of trial is changed as to one or more of them, and not as to the others, the others must be tried as if the place of trial had not been changed as to any defendant.

CHAPTER VII.

THE MODE OF TRIAL.

Section 1224. Issue of fact defined.
" 1225. How tried.
" 1226. When presence of defendant is necessary on the trial.

SEC. 1224. An issue of fact arises—

1. Upon a plea of not guilty.

2. Upon a plea of a former conviction or acquittal of the same offense.

3. Upon a plea of once in jeopardy.

SEC. 1225. Issues of fact must be tried by jury, unless a trial by jury be waived in criminal cases not amounting to felony, by the consent of both parties expressed in open court and entered in its minutes. In cases of misdemeanor the jury may consist of twelve, or any number less than twelve upon which the parties may agree in open court. In cases not amounting to a felony two-thirds in number of the jury may render a verdict.

SEC. 1226. The defendant must be personally present at the trial; but if for misdemeanor, the trial may be had in the absence of the defendant; if his presence is necessary for any purpose, the court may upon application of the county attorney, by an order or warrant, require the personal attendance of the defendant at the trial.

CHAPTER VIII.

FORMATION OF THE TRIAL JURY AND THE CALENDAR OF ISSUES FOR TRIAL.

Section 1229. Formation of trial jury.
" 1230. Clerk to prepare a calendar.
" 1231. Order of disposing of issues on the calendar.
" 1232. Defendant entitled to two days to prepare for trial.

SEC. 1229. Trial juries for criminal actions are formed in the same manner as trial juries in civil actions.

SEC. 1230. The clerk must keep a calendar of all criminal actions pending in the court, enumerating them according to the date of the filing of the indictment or information, specifying opposite the title of each action whether it is for felony or a misdemeanor, and whether the defendant is in custody or on bail.

SEC. 1231. The issues on the calendar must be disposed of in the following order, unless for good cause the court shall direct an action to be tried out of its order:

1. Prosecutions for felony, when the defendant is in custody.
2. Prosecutions for misdemeanor, when the defendant is in custody.
3. Prosecutions for felony, when the defendant is on bail.
4. Prosecutions for misdemeanor, when the defendant is on bail.

SEC. 1232. After his plea, the defendant is entitled to at least two days to prepare for trial.

CHAPTER IX.

POSTPONEMENT OF THE TRIAL.

Section 1236. Notice and affidavits for postponement.
" 1237. Postponement for cause.
" 1238. State may have continuance.
" 1239. Effect of failure to apply.
" 1240. Case set for trial.

SEC. 1236. At the time the defendant makes his plea to an indictment or information he must notify the court of his desire for a postponement of the trial to some particular day, or for the term, and must file his affidavit, showing good cause therefor, within such time as the court may grant.

SEC. 1237. For good cause shown, the court may postpone the trial for any number of days, or for the term. Any cause which would be considered a good one for a postponement in a civil case, is sufficient in a criminal action.

SEC. 1238. The State may obtain a postponement for the same reasons, and must give the same notice therefor as the defendant, and be subject to the same restrictions; the county attorney, or any one acquainted with the facts, may make the proper affidavit.

SEC. 1239, If neither the defendant nor the State notify the court at the time the defendant pleads of a desire for a postponement, they shall not be entitled to make the application thereafter for any cause which existed at that time, and of which the party making the application had knowledge, or could have had knowledge; any application made after that time must be for cause which arose, or had come to the knowledge of the applicant, since the making of the plea.

SEC. 1240. If the case is not postponed, it must be set down for trial on some certain day, in the order in which it appears on the calendar, unless by consent it is set down for trial out of its order.

TITLE VII.

PROCEEDINGS AFTER THE COMMENCEMENT OF THE TRIAL AND BEFORE JUDGMENT.

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" *II. The trial.*
" *III. Conduct of the jury after cause is submitted to them.*
" *IV. The verdict.*
" *V. Bills of exception.*
" *VI. New trials.*
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CHAPTER I.

CHALLENGING THE JURY.

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" *1246. Defendants cannot sever in challenges.*
" *1247. Panel defined.*
" *1248. Challenge to the jury defined.*
" *1249. Upon what founded.*
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" *1266. Causes of challenge, how stated.*
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" *1269. Juror challenged may be examined as a witness.*
" *1270. Rules of evidence on trial of challenge.*
" *1271. Decision of court to be entered.*
" *1272. Challenges, how taken.*

SEC. 1245. A challenge is an objection made to the trial jurors, and is of two kinds:

1. To the panel.
2. To an individual juror.

SEC. 1246. When the several defendants are tried together, they cannot sever their challenges, but must join therein.

SEC. 1247. The panel is a list of jurors returned by a sheriff to serve at a particular court, or for trial of a particular action.

SEC. 1248. A challenge to the panel is an objection made to all the jurors returned, and may be taken by either party.

SEC. 1249. A challenge to the panel can be founded only on a material departure from law in respect to the drawing and return of the jury as in civil actions, or on the intentional omission of the sheriff to summon one or more of the jurors drawn.

SEC. 1250. A challenge to the panel must be taken before the jurors are sworn, and must be in writing or be noted by the stenographer, and must plainly and distinctly state the facts constituting the ground of challenge.

SEC. 1251. If the sufficiency of the facts alleged as ground of the challenge is denied, the adverse party may except to the challenge. The exception need not be in writing, but must be entered on the minutes of the court, or of the stenographer, and thereupon the court must proceed to try the sufficiency of the challenge, assuming the facts alleged therein to be true.

SEC. 1252. If, on the exception, the court finds the challenge sufficient, it may, if justice requires it, permit the party excepting to withdraw his exception, and to deny the facts alleged in the challenge. If the exception is allowed, the court may, in like manner, permit an amendment of the challenge.

SEC. 1253. If the challenge is denied, the denial may be oral, and must be entered on the minutes of the court, or of the stenographer, and the court must proceed to try the question of fact; and upon such trial, the officers, whether judicial or ministerial, whose irregularity is complained of, as well as any other persons, may be examined to prove or disprove the facts alleged as the ground of the challenge.

SEC. 1254. If, either upon an exception to the challenge or a denial of the facts, the challenge is allowed, the court must discharge the jury so far as the trial in question is concerned. If it is disallowed, the court must direct the jury to be impaneled.

SEC. 1255. A challenge to an individual juror is either—

1. Peremptory, or,
2. For cause.

SEC. 1256. All challenges must be interposed before the jury is sworn, unless the cause of challenge be discovered after the jury is sworn and before the introduction of any evidence, when the court, in its discretion, may allow the challenge to be interposed.

SEC. 1257. Whenever a juror is excused from the jury, after it is sworn, upon challenge of either party, the panel must be filled in the same manner as before the swearing of the jury.

SEC. 1258. A peremptory challenge can be taken by either party, and may be oral. It is an objection to a juror for which no reason need be given, but upon which the court must exclude him.

SEC. 1259. The defendant is entitled to a peremptory challenge of jurors in the following cases, and to the number as follows:

1. If the offense charged be punishable with death, or by imprisonment for life, challenges to the number of ten.

2. If the offense be punishable with imprisonment in the state prison not less than a specified number of years, and no limit to the duration of such imprisonment is declared, to the number of eight.

3. In any other case punishable with imprisonment in the state prison, to the number of six.

4. In all other cases, to the number of four.

SEC. 1260. The State may challenge half the number of jurors allowed the defendant.

SEC. 1261. A challenge for cause may be taken by either party. It is an objection to a particular juror, and is either—

1. General—That the juror is disqualified from serving in any case; or,

2. Particular—That the juror is disqualified from the serving in the action on trial.

SEC. 1262. General causes of challenge are—

1. A conviction for felony.

2. A want of any of the qualifications prescribed by law to render a person a competent juror.

3. Unsoundness of mind, or such defect in the faculties of the mind or organs of the body as renders him incapable of performing the duties of a juror.

SEC. 1263. Particular causes of challenge are of two kinds:

1. For such a bias as, when the existence of the facts is ascertained, in judgment of law disqualifies the juror, and which is known in this Code as implied bias.

2. For the existence of a state of mind on the part of the juror in reference to the case, or to either of the parties, which will prevent him from acting with entire impartiality and without prejudice to the substantial rights of either party, which is known in this Code as actual bias.

SEC. 1264. A challenge for implied bias may be taken for all or any of the following causes, and for no other:

1. Consanguinity or relationship to the person alleged to be

injured by the offense charged, or on whose complaint the prosecution was instituted, or to the defendant.

2. Standing in the relation of guardian and ward, attorney and client, master and servant, or landlord and tenant, debtor and creditor, to, or being a member of, the family of the defendant, or of the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or in his employment.

3. Being a party adverse to the defendant in a civil action, or having complained against or been accused by him in a criminal prosecution.

4. Having served on the grand jury which found the indictment, or on a coroner's jury which inquired into the death of a person whose death is the subject of the indictment or information.

5. Having served on a trial jury which has tried another person for the offense charged.

6. Having been one of a jury formerly sworn to try the same charge, and whose verdict was set aside or which was discharged without verdict, after the case was submitted to it.

7. Having served as a juror in a civil action brought against the defendant for the act charged as an offense.

8. If the offense charged be punishable with death, the entertaining of such conscientious opinions as would preclude his finding the defendant guilty; in which case he must neither be permitted nor compelled to serve as a juror.

9. Having a belief that the punishment fixed by law is too severe for the offense charged.

SEC. 1265. An exemption from service on a jury is not a cause of challenge, but the privilege of the person exempted.

SEC. 1266. In a challenge for implied bias, one or more of the causes stated in Section 1264 must be alleged. In a challenge for actual bias, the cause stated in the second subdivision of Section 1263 must be alleged; but no person shall be disqualified as a juror by reason of having formed or expressed an opinion upon the matter or cause to be submitted to such jury, founded upon public rumor, statements in public journals, or common notoriety provided it appear to the court, upon his declaration, under oath or otherwise, that he can and will, notwithstanding such opinion, act impartially and fairly upon the matters to be submitted to him. The challenge may be oral, but must be entered in the minutes of the court or of the stenographer.

SEC. 1267. The adverse party may except to the challenge in the same manner as to a challenge to the panel, and the same proceedings must be had thereon as are prescribed in Section 1251, except that if the exception be allowed, the juror must be excluded. The adverse party may also orally deny the facts alleged as the ground of challenge.

SEC. 1268. If the facts are denied, the challenge must be tried by the court.

SEC. 1269. Upon the trial of a challenge to an individual juror the juror challenged may be examined as a witness to prove or disprove the challenge, and must answer every question pertinent to the inquiry.

SEC. 1270. Other witnesses may also be examined on either side, and the rules of evidence applicable to the trial of other issues govern the admission or exclusion of evidence on the trial of the challenge.

SEC. 1271. The court must allow or disallow the challenge, and its decision must be entered in the minutes of the court.

SEC. 1272. Challenges for cause and peremptory challenges must be taken in the manner provided in Sections 649, 652, and 653 of the Code of Civil Procedure.

CHAPTER II.

THE TRIAL.

Section 1277. Order of trial.
“ *1278. When order of trial may be departed from.*
“ *1279. Defendant presumed innocent. Reasonable doubt.*
“ *1280. Reasonable doubt as to degree convicts only of lowest.*
“ *1281. Separate trials.*
“ *1282. Discharging defendant that he may be a witness.*
“ *1283. Same.*
“ *1284. Effect of such discharge.*
“ *1285. Rules of evidence in civil applicable to criminal cases.*
“ *1286. Evidence on trial for treason.*
“ *1287. Evidence on trial for conspiracy.*
“ *1288. When burden of proof shifts in trial for murder.*
“ *1289. All witnesses need not be called.*
“ *1290. Evidence on a trial for bigamy.*
“ *1291. Evidence upon a trial for forging bank-bills, etc.*
“ *1292. Evidence upon trial for abortion and seduction.*
“ *1293. Proof of corporation by reputation.*
“ *1294. Evidence on a trial for selling, etc., lottery tickets.*
“ *1295. Evidence of false pretenses.*
“ *1296. Conviction on testimony of accomplice.*
“ *1297. Mistake in indictment or information.*
“ *1298. Discharge of jury for lack of jurisdiction, etc.*

" 1299. *Proceedings, if jury discharged for want of jurisdiction of offense committed out of the State.*
" 1300. *Proceedings in such case, when offense committed in the State.*
" 1301. *Same.*
" 1302. *Proceedings, if jury discharged because the facts do not constitute an offense.*
" 1303. *When evidence on either side is closed, court may advise jury to acquit.*
" 1304. *View of premises, when ordered, and how conducted.*
" 1305. *Knowledge of juror to be declared in court, and he to be sworn as a witness.*
" 1306. *Jurors, separation of, during trial.*
" 1307. *Jury, at each adjournment, must be admonished, etc.*
" 1308. *Juror unable to perform his duties, proceedings.*
" 1309. *Court to decide questions of law arising during trial.*
" 1310. *Conviction or acquittal.*
" 1311. *On indictment for libel, jury to determine law and fact.*
" 1312. *In all other cases court to decide questions of law.*
" 1313. *Jury may decide in court, or retire in custody of officers.*
" 1314. *Defendant appearing for trial may be committed.*
" 1315. *If county attorney fails to attend, court may appoint.*
" 1316. *Trials for larceny.*

SEC. 1277. The jury having been impaneled and sworn, the trial must proceed in the following order, unless otherwise directed by the court:

1. The county attorney must state the case, and offer evidence in support of the prosecution.

2. The defendant, or his counsel, may then state his defense and offer evidence in support thereof.

3. The parties may respectively offer rebutting testimony only, unless the court, for good reason, in furtherance of justice, permit them to offer evidence upon their original case.

4. When the evidence is concluded, unless the case is submitted without argument, the counsel for the State must make the opening argument, the counsel for the defendant or defendants must follow and the counsel for the State must conclude the argument.

5. The court must then charge the jury as provided in subdivisions 7, 8 and 9, section 660 of the Code of Civil Procedure.

6. No refused instruction must be read in the hearing of the jury; nor must the court, in any case, make any oral comments to the jury on the instructions, unless by agreement of both parties. All instructions given and refused must be filed among the papers of the case.

SEC. 1278. When the state of the pleadings requires it, or in any other case, for good reasons, and in the sound discretion of the court, the order prescribed in the last section may be departed from.

SEC. 1279. A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to an acquittal.

SEC. 1280. When it appear that the defendant has committed a public offense, and there is reasonable ground of doubt in which of two or more degrees he is guilty, he can be convicted of the lowest of such degrees only.

SEC. 1281. When two or more defendants are jointly charged with a felony, any defendant requiring it must be tried separately. In other cases the defendants jointly charged may be tried separately or jointly in the discretion of the court.

SEC. 1282. When two or more persons are included in the same charge, the court may, at any time, before the defendants have gone into their defense, on the application of the county attorney, direct any defendant to be discharged, that he may be a witness for the State.

SEC. 1283. When two or more persons are included in the same indictment or information, and the court is of the opinion that in regard to a particular defendant there is not sufficient evidence to put him on his defense, it must order him to be discharged before the evidence is closed, that he may be a witness for his co-defendant.

SEC. 1284. The order mentioned in the two last sections is an acquittal of the defendant discharged, and is a bar to another prosecution for the same offense.

SEC. 1285. The rules of evidence in civil actions are applicable also to criminal actions, except as otherwise provided in this Code.

SEC. 1286. Upon a trial for treason, the defendant cannot be convicted unless upon the testimony of two witnesses to the same overt act, or upon confession in open court; nor can evidence be admitted of an overt act not expressly charged in the indictment or information; nor can the defendant be convicted unless one or more overt acts be expressly alleged therein.

SEC. 1287. Upon a trial for conspiracy, in a case where an overt act is necessary to constitute the offense, the defendant cannot be convicted unless one or more overt acts are expressly alleged in the indictment or information, nor unless one of the acts alleged is proved; but other overt acts not alleged may be given in evidence.

SEC. 1288. Upon a trial for murder, the commission of the homicide by the defendant being proved, the burden of proving circumstances, of mitigation, or that justify or excuse it, devolves upon him, unless the proof on the part of the prosecution tends to show that the crime committed only amounts to manslaughter, or that the defendent was justifiable or excusable.

SEC. 1289. Upon a trial for murder or manslaughter it is not necessary for the State to call as witnesses all persons who are shown to have been present at the homicide, but the court may require all of such witnesses to be sworn and examined.

SEC. 1290. Upon a trial for bigamy, it is not necessary to prove either of the marriages by the register, certificate, or other record evidence thereof, but the same may be proved by such evidence as is admissible to prove a marriage in other cases; and when the second marriage took place out of this State, proof of that fact, accompanied with proof of cohabitation thereafter in this State, is sufficient to sustain the charge.

SEC. 1291. Upon a trial for forging any bill or note purporting to be the bill or note of an incorporated company or bank, or for passing, or attempting to pass, or having in possession with intent to pass, any such forged bill or note, it is not necessary to prove the incorporation of such bank or company by the charter or act of incorporation, but it may be proved by general reputation and persons of skill are competent witnesses to prove that such bill or note is forged or counterfeited.

SEC. 1292. Upon a trial for procuring or attempting to procuring an abortion, or aiding or assisting therein, or for inveigling, enticing, or taking away an unmarried female of previous chaste character, under the age of twenty-five years, for the purpose of prostitution, or aiding or assisting therein, the defendant cannot be convicted upon the testimony of the woman upon or with whom the offense was committed, unless she is corroborated by other evidence.

SEC. 1293. If upon a trial or proceeding in a criminal case, the existence, constitution, or powers of any corporation shall become material, or be in any way drawn in question, it is not necessary to produce a certified copy of the articles or act of incorporation, but the same may be proved by general reputation, or by the printed statutes of the State, government, or by which such corporation was created.

SEC. 1294. Upon a trial for the violation of any of the provisions of Chapter IX., Title IX., Part I., of this Code, it is not necessary to prove the existence of any lottery in which any lottery ticket purports to have been issued, or to prove the actual signing of any such ticket, or share, or pretended ticket or share, of any pretended lottery, nor that any lottery ticket, share or interest was signed or issued by the authority of any manager, or of any person assuming to have authority as manager; but in all cases proof of the sale, furnishing, bartering, or procuring of any ticket, share, or interest therein, or of any instrument purporting to be a ticket, or part or share of any such ticket, is evidence that such share or interest was signed and issued according to the purport thereof.

SEC. 1295. Upon a trial for having, with an intent to cheat or defraud another designedly, by any false pretense, obtained the signature of any person to a written instrument, or having obtained from any person any money, personal property, or valuable thing, the defendant cannot be convicted if the false pretense was expressed in language unaccompanied by a false token or writing, unless the pretense, or some note or memorandum thereof, be in writing, subscribed by or in the handwriting of the defendant; but this section shall not apply to a prosecution for falsely representing or personating another, and, in such assumed character, marrying, or receiving any money or property.

SEC. 1296. A conviction cannot be had on the testimony of an accomplice, unless he is corroborated by other evidence, which in itself, and without the aid of the testimony of the accomplice, tends to connect the defendant with the commission of the offense; and the corroboration is not sufficient, if it merely shows the commission of the offense, or the circumstances thereof.

SEC. 1297. When it appears, at any time before verdict or judgment, that a mistake has been made in charging the proper offense, the defendant must not be discharged, if there appears good cause to detain him in custody; but the court must commit him, or require him to give bail for his appearance to answer to the offense; and may also require the witnesses to give bail for their appearance.

SEC. 1298. The court may direct the jury to be discharged where it appears that it has not jurisdiction of the offense, or that the facts charged do not constitute an offense punishable by law.

SEC. 1299. If the jury be discharged because the court has not jurisdiction of the offense charged, and it appear that it was committed out of the jurisdiction of this State, the defendant must be discharged.

SEC. 1300. If the offense was committed within the jurisdiction of another county of this State, the court may direct the defendant to be committed for such time as it deems reasonable, to await a warrant from the proper county for his arrest; or if the offense is a misdemeanor only, it may admit him to bail in an undertaking, with sufficient sureties, that he will, within such time as the court may appoint, render himself amenable to a warrant for his arrest from the proper county; and, if not sooner arrested thereon, will attend at the office of the sheriff of the county where the trial was had, at a certain time particularly specified in the undertaking to surrender himself upon the warrant, if issued, or that his bail will forfeit such sum as the court may fix, to be mentioned in the undertaking; and the clerk must forthwith transmit a certified copy of the indictment or information, and of all the papers filed in the action, to the county attorney of the proper county, the expense of which transmission is chargeable to that county.

SEC. 1301. If the defendant is not arrested on a warrant from the proper county, as provided in the next preceding section, he must be discharged from custody, or his bail in the action is exonerated, or money deposited instead of bail must be refunded, as the case may be, and the sureties in the undertaking, as mentioned in that section, must be discharged. If he is arrested, the same proceedings must be had thereon as upon the arrest of a defendant in another county on a warrant of arrest issued by a magistrate.

SEC. 1302. If the jury be discharged because the facts as charged do not constitute an offense punishable by law, the court must order that the defendant, if in custody, be discharged; or if admitted to bail, that his bail be exonerated; or if he has deposited money instead of bail, that the money be refunded to him, unless in its opinion a new indictment or information can be framed, upon which the defendant can be legally convicted, in which case it may direct the county attorney to file a new information, or (if the defendant has not been committed by a magistrate) direct that the case be submitted to the same or another grand jury; and the same proceedings must be had thereon as are prescribed in section 1176.

SEC. 1303. If, at any time after the evidence on either side is closed, the court deems it insufficient to warrant a conviction, it may advise the jury to acquit the defendant. But the jury is not bound by the advice.

SEC. 1304. When, in the opinion of the court, it is proper that the jury should view the place in which the offense is charged to have been committed, or in which any other material fact occurred, it may order the jury to be conducted in a body, in the custody of the sheriff and in the presence of the defendant, to the place, which must be shown to them by a person appointed by the court for that purpose; and the sheriff must be sworn to suffer no person to speak or communicate with the jury, nor to do so himself, on any subject connected with the trial, and to return them into court without unnecessary delay, or at a specified time.

SEC. 1305. If a juror has any personal knowledge respecting a fact in controversy in a cause, he must declare the same in open court during the trial. If, during the retirement of the jury, a juror declare a fact which could be evidence in the cause, as of his own knowledge, the jury must return into court. In either of these cases, the juror making the statement must be sworn as a witness, and examined in the presence of the parties.

SEC. 1306. The jurors sworn to try an action may, at any time before the submission of the cause to the jury, in the discretion of the court, be permitted to separate or be kept in charge of a proper officer. The officer must be sworn to keep the jurors together until the next meeting of the court, to suffer no person to speak to them or communicate with them, nor to do so himself, on any subject connected with the trial, and to return them into court at the next meeting thereof.

SEC. 1307. The jury must also, at each adjournment of the court, whether permitted to separate or kept in charge of officers, be admonished by the court that it is their duty not to converse among themselves, or with any one else, on any subject connected with the trial, or to form or express any opinion thereon until the cause is finally submitted to them.

SEC. 1308. If, before the conclusion of the trial the judge or a juror becomes sick, so as to be unable to perform his duty, the court may order him to be discharged. In that case a new juror may be sworn, and the trial begun anew, or the jury may be discharged, and a new jury then or afterwards impaneled.

SEC. 1309. The court must decide all questions of law which arise in the course of a trial.

SEC. 1310. When the defendant has been convicted or acquitted upon an indictment for an offense, consisting of different degrees, the conviction or acquittal is a bar to another indictment or information for the offense charged in the former, or for any lower degree of that offense, or for an offense necessarily included therein.

SEC. 1311. On a trial for libel, the jury has the right to determine the law and the fact.

SEC. 1312. On a trial for any other offense than libel, questions of law are to be decided by the court, questions of fact by the jury; although the jury have the power to find a general verdict, which includes questions of law as well as of fact, they are bound, nevertheless, to receive as law what is laid down as such by the court.

SEC. 1313. After hearing the charge, the jury may either decide in court, or may retire for deliberation. If they do not agree without retiring, an officer must be sworn to keep them together in some private and convenient place, and not to permit any person to speak to or communicate with them, nor to do so himself, unless by order of the court, or to ask them whether they have agreed upon a verdict, and to return them into court when they have so agreed, or when ordered by the court.

SEC. 1314. When a defendant who has given bail appears for trial, the court may, in its discretion, at any time after his appearance for trial, order him to be committed to the custody of the proper officer of the county, to abide the judgment or further order of the court, and he must be committed and held in custody accordingly.

SEC. 1315. If the county attorney fails to attend at the trial, the court must appoint some attorney-at-law to perform the duties of the county attorney on such trial.

SEC. 1316. Upon a trial for larceny of money, bank notes, certificates of stock, or valuable securities, the allegation of the indictment or information, so far as regards the description of the property, is sustained, if the offender be proved to have embezzled or stolen any money, bank notes, certificates of stock, or valuable securities, although the particular species of coin or other money, or the number, denomination, or kind of bank notes, certificates of stock or valuable security, be not proved; and upon a trial for larceny, if the offender be proved to have stolen any piece of coin or other money, any bank note, certificate of stock, or valuable security, although such piece of coin or other money, or such bank note, certificate of stock, or valuable security, may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same, and such part shall have been returned accordingly.

CHAPTER III.

CONDUCT OF THE JURY AFTER THE CAUSE IS SUBMITTED TO THEM.

Section 1320. Room, etc., for jury after retirement.
" *1321. Accommodations for jury when kept together.*
" *1322. What papers the jury may take with them.*
" *1323. After retirement, may return into court for information.*
" *1324. If juror after retirement become sick, etc.*
" *1325. Not to be discharged unless there is no probability that they can agree.*
" *1326. When discharged without verdict, cause to be again tried.*
" *1327. Court may adjourn during absence, but deemed open.*

SEC. 1320. A room must be provided by the county commissioners of each county for the use of the jury, upon their retirement for deliberation, with suitable furniture, fuel, lights, and stationery. If the county commissioners neglect, the court may order the sheriff to do so, and the expenses incurred by him in carrying the order into effect, when certified by the court, are a county charge.

SEC. 1321. When the jury are kept together, either during the progress of the trial or after retirement for deliberation, they must be provided by the sheriff, at the expense of the county, with suitable and sufficient food and lodging.

SEC. 1322. Upon retiring for deliberation, the jury may take with them all papers (excepting depositions) which have been received as evidence in the cause, or copies of such public records or private documents given in evidence as ought not, in the opinion of the court, to be taken from the person having them in possession. They may also take with them the written instructions and notes of the testimony or other proceedings on the trial, taken by themselves, or any of them, but none taken by any other person.

SEC. 1323. After the jury have retired for deliberation, if there be any disagreement between them as to the testimony, or if they desire to be informed on any point of law arising in the cause, they must require the officer to conduct them into court. Upon being brought into court, the information required must be given in the presence of the county attorney and the defendant and his counsel.

SEC. 1324. If, after the retirement of the jury, one of them be taken so sick as to prevent the continuance of his duty, or any other accident or cause occur to prevent their being kept for deliberation, the jury may be discharged.

SEC. 1325. Except as provided in the last section, the jury cannot be discharged after the cause is submitted to them until they have agreed upon their verdict, and rendered it in open court, unless by consent of both parties, entered upon the minutes, or unless at the expiration of such time as the court may deem proper, it satisfactorily appears that there is reasonable probability that the jury cannot agree.

SEC. 1326. In all cases where a jury is discharged or prevented from giving a verdict by reason of an accident or other cause, except where the defendant is discharged during the progress of the trial, or after the cause is submitted to them, the cause may be again tried.

SEC. 1327. While the jury are absent, the court may adjourn from time to time, as to other business, but it must nevertheless be open for every purpose connected with the cause submitted to the jury, until a verdict is returned or the jury discharged.

CHAPTER IV.

THE VERDICT.

Section 1332. Return of jury.
" *1333. Appearance of defendant.*
" *1334. Manner of taking verdict.*
" *1335. General verdict.*
" *1336. Insufficient verdict.*

Section 1337. *Jury to find degree of crime.*
" 1338. *Jury may find upon charge of previous conviction.*
" 1339. *Jury may convict of lesser offense, or of attempt.*
" 1340. *Verdict as to some defendants, new trial as to others.*
" 1341. *To ascertain value of property.*
" 1342. *Jury may assess punishment.*
" 1343. *Court may assess punishment.*
" 1344. *Same.*
" 1345. *Same.*
" 1346. *Court may reduce verdict.*
" 1347. *Polling jury.*
" 1348. *Juror in contempt.*
" 1349. *Defendant, when to be discharged.*
" 1350. *Proceedings upon conviction.*
" 1351. *Proceedings on acquittal, on ground of insanity.*

SEC. 1332. When the jury have agreed upon their verdict they must be conducted into court by the officer having them in charge. Their names must then be called, and if all do not appear, the rest must be discharged without giving a verdict. In that case the action may be again tried at the same or another term or session.

SEC. 1333. If charged with a felony, the defendant must, before the verdict is received, appear in person. If for a misdemeanor, the verdict may be rendered in his absence.

SEC. 1334. When the jury agree upon a verdict, they must be brought into court and their names called by the clerk, and if all be present, their foreman must deliver their verdict to the court, who may, with their consent, in their presence, correct the same as to matters of form. The court must deliver the verdict to the clerk, who must file and record the same, and then read the same to the jury, and ask them if the verdict as recorded is their verdict; if all of the jury in the case of a felony, or two-thirds of their number in the case of a misdemeanor, assent thereto, they must be discharged.

SEC. 1335. A verdict upon a plea of not guilty is either "guilty" or "not guilty," which imports a conviction or acquittal of the offense charged in the indictment or information. Upon a plea of a former conviction or acquittal of the same offense, it is either "for the State" or "for the defendant." When the defendant is acquitted on the ground that he was insane at the time of the commission of the act charged, the verdict must be "not guilty by reason of insanity." When the defendant is acquitted on the ground of variance between the indictment or information and the proof, the verdict must be "not guilty by reason of variance between indictment or information and proof."

SEC. 1336. If the verdict is insufficient, the jury must again retire.

SEC. 1337. Whenever a crime is distinguished into degrees, the jury, if they convict the defendant, must find the degree of the crime of which he is guilty.

SEC. 1338. Whenever the fact of a previous conviction of another offense is charged in an indictment or information, the jury, if they find a verdict of guilty of the offense with which he is charged, must also, unless the answer of the defendant admits the charge, find whether or not he has suffered such previous conviction. The verdict of the jury upon a charge of previous conviction may be: "We find the charge of previous conviction true," or, "we find the charge of previous conviction not true," as they find that the defendant has or has not suffered such conviction.

SEC. 1339. The jury may find the defendant guilty of any offense, the commission of which is necessarily included in that with which he is charged, or of an attempt to commit the offense.

SEC. 1340. On an indictment or information against several, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment must be entered accordingly, and the case as to the others may be tried by another jury.

SEC. 1341. When the indictment or information charges an offense against the property of another, by robbery, larceny, burglary, fraud, or the like, the jury, on conviction, must ascertain and declare in their verdict the value of the property taken, embezzled, or received, and the amount restored, if any, and the value thereof; but their failure to do so does not affect the validity of their verdict.

SEC. 1342. In all cases of a verdict of conviction for any offense, when by law there is any alternative or discretion in regard to the kind or extent of punishment to be inflicted, the jury may assess and declare the punishment in their verdict; and the court must render a judgment according to such verdict, except as hereinafter provided.

SEC. 1343. When a jury find a verdict of guilty, and fail to agree on the punishment to be inflicted, or do not declare such punishment by their verdict, or assess a punishment not authorized by law, and in all cases of judgment by confession, the court must assess and declare the punishment, and render judgment accordingly.

SEC. 1344. If the jury assess a punishment, whether of imprisonment or fine, below the limit prescribed by law, for the offense of which the defendant is convicted, the court must pronounce sentence and render judgment according to the lowest limit prescribed by law, in such case.

SEC. 1345. If the jury assess a punishment, whether of imprisonment or fine, greater than the highest limit declared by law, for the offense of which they convict the defendant, the court must disregard the excess, and pronounce sentence, and render judgment according to the highest limit prescribed by law in the particular case.

SEC. 1346. The court has power in all cases of conviction, to reduce the extent or duration of the punishment assessed by a jury, if, in its opinion, the conviction is proper, and the punishment assessed is greater than, under the circumstances of the case, ought to be inflicted.

SEC. 1347. When a verdict is rendered, the jury may be polled, at the request of either party, in which case they must be severally asked whether it is their verdict, and if any one answer in the negative, the jury must be sent out for further deliberation.

SEC. 1348. A juror who does not dissent to the verdict, when the same is read to him by the clerk, if such is not his verdict, is guilty of contempt of court.

SEC. 1349. If judgment of acquittal is given on a general verdict, and the defendant is not detained for any other legal cause, he must be discharged as soon as the judgment is given, except where the acquittal is because of a variance between the pleading and proof, which may be obviated by a new indictment or information, the court may order his detention, to the end that a new indictment or information may be preferred, in the same manner and with like effect as provided in Section 1302.

SEC. 1350. If a verdict is rendered against the defendant, he must be remanded, if in custody, or if on bail, must be committed to the proper officer of the county to await the judgment of the court upon the verdict. When committed, his bail is exonerated, or if money is deposited instead of bail, it must be refunded to the defendant.

SEC. 1351. If the jury render a verdict of acquittal on the ground of insanity, the court may order a jury to be summoned from the jury list of the county, to inquire whether the defendant continues to be insane. The court may cause the same witnesses to be summoned who testified on the trial, and other witnesses, and direct the county attorney to conduct the proceedings, and counsel may appear for the defendant. The court may direct the sheriff to take the defendant and retain him in custody until the question of continuing insanity is determined. If the jury find the defendant insane, he shall be committed by the sheriff to the state insane asylum. If the jury find the defendant sane, he shall be discharged.

CHAPTER V.

BILLS OF EXCEPTION.

Section 1355. In what cases.
" 1356. When to be settled and signed.

Section 1357. Exceptions to decision of court by either party.
" 1358. Exceptions to decision of court by the defendant.
" 1359. Exceptions, how settled, by Supreme Court.
" 1360. What bill of exceptions to contain.
" 1361. Written charges, etc., need not be excepted to.

SEC. 1355. On the trial of an indictment or information exceptions may be taken by the defendant to a decision of the court—

1. In disallowing a challenge to the panel of the jury, or to an individual juror for implied bias.

2. In admitting or rejecting testimony on the trial of a challenge to a juror for actual bias.

3. In admitting or rejecting testimony, or in deciding any question of law not a matter of discretion, or in charging or instructing the jury upon the law on the trial of the issue.

SEC. 1356. When a party desires to have the exceptions taken at the trial settled in a bill of exceptions, the draft of a bill must be prepared by him and presented, upon notice of at least two days to the county attorney, to the judge for settlement within ten days after judgment has been rendered against him, unless further time is granted by the judge, or by a justice of the Supreme Court, or within that period the draft must be delivered to the clerk of the court for the judge. When received by the clerk he must deliver it to the judge, or transmit it to him at the earliest period practicable. When settled, the bill must be signed by the judge and filed with the clerk of the court.

SEC. 1357. The decision of a court or judge upon a matter of law is deemed excepted to by either party in the following cases:

1. In granting or refusing a motion to set aside an indictment or information:

2. In allowing or disallowing a demurrer to an indictment or information.

3. In granting or refusing a motion in arrest of judgment.

4. In granting or refusing a motion for a new trial.

5. In making, or refusing to make, an order after judgment affecting any substantial right of the parties.

SEC. 1358. The decision of the court or judge upon a matter of law is deemed excepted to by the defendant in the following cases:

1. In refusing to grant a motion for a change of place of trial.

2. In refusing to postpone the trial on motion of the defendant.

SEC. 1359. If the judge in any case refuses to allow an exception in accordance with the facts, the party desiring the bill settled may apply by petition to the Supreme Court to prove the same, the application may be made in the mode and manner, and under such regulations as that court may prescribe; and the bill, when proven, must be certified by the chief justice as correct, and filed with the clerk of the court in which the action was tried, and when so filed, it has the same force and effect as if settled by the judge who tried the cause. If the judge who presided at the trial ceases to hold office before the bill is tendered or settled, he may nevertheless settle such bill, or the party may, as provided in this section, apply to the Supreme Court to prove the same.

SEC. 1360. A bill of exceptions must contain so much of the evidence only as is necessary to present the questions of law upon which the exceptions were taken; and the judge must, upon the settlement of the bill, whether agreed to by the parties or not, strike out all other matters contained therein.

SEC. 1361. When written charges have been presented, given, or refused, the questions presented in such charges, or in any of the instructions given to the jury, need not be excepted to or embodied in a bill of exceptions, but the written charges and instructions, with the indorsements showing the action of the court, form part of the record, and any error in the decision of the court thereon may be taken advantage of on appeal, in like manner as if presented in a bill of exceptions. The decision of the court or judge upon any matters of law mentioned in Sections 1357 and 1358 is deemed excepted to and no bill of exceptions is required.

CHAPTER VI.

NEW TRIALS.

Section 1365. New trial defined.
" 1366. Its effect.
" 1367. In what cases it may be granted.
" 1368. Application for, how made.
" 1369. Same.

SEC. 1365. A new trial is a re-examination of the issue in the same court, before another jury, after a verdict has been given.

SEC. 1366. The granting of a new trial places the parties in the same position as if no trial had been had. All the testimony must be produced anew, and the former verdict cannot be used or referred to either in evidence or in argument, or be pleaded in bar of any conviction which might have been had under the indictment or information.

SEC. 1367. When a verdict has been rendered against the defendant, the court may, upon his application, grant a new trial in the following cases only.

1. When the trial has been had in his absence, if the indictment or information is for a felony.

2. When the jury has received out of court any evidence

other than that resulting from a view of the premises, or any communication, document or paper referring to the case.

3. When the jury has separated without leave of the court, after retiring to deliberate upon their verdict, or been guilty of any misconduct by which a fair and due consideration of the case has been prevented.

4. When the verdict has been decided by lot, or by any means other than a fair expression of opinion on the part of all the jurors.

5. When the court has misdirected the jury in a matter of law, or has erred in the decision of any question of law arising during the course of the trial.

6. When the verdict is contrary to law or evidence.

7. When new evidence is discovered material to the defendant, and which he could not, with reasonable diligence, have discovered and produced at the trial.

When a motion for a new trial is made upon the ground of newly-discovered evidence, the defendant must produce at the hearing, in support thereof, the affidavits of the witnesses by whom such evidence is expected to be given, and if time is required by the defendant to procure such affidavits, the court may postpone the hearing of the motion for such length of time as, under all the circumstances of the case, may seem reasonable.

SEC. 1368. The application for a new trial must be made upon written notice of motion, and, if based upon any of the grounds mentioned in the Subdivisions 2, 3, 4 and 7, of the preceding section, such written notice of motion must be filed within thirty days after the discovery of the facts upon which the party relies in support of his motion; in all other cases notice of motion must be filed within ten days after the rendition of the verdict.

SEC. 1369. A motion for a new trial, if made for any of the causes mentioned in the first, second, third, fourth and seventh subdivisions of Section 1367, must be based upon affidavits, which must be filed at the same time as the notice of motion, or within such further time as may be allowed by the court or judge; in all other cases the motion must be made upon a bill of exceptions; and the notice of motion must designate the grounds upon which the motion will be made. A motion for a new trial must be heard on the second day after notice is filed, or as soon as practicable thereafter; and in all cases, if notice of motion is filed before judgment, the court or judge may, in his discretion, make an order staying further proceedings in the case until such motion is disposed of.

CHAPTER VII.

ARREST OF JUDGMENT.

Section 1373. Motion in arrest of judgment.
" 1374. Court may arrest judgment without motion.

Section 1375. Effect of arresting judgment.
" 1376. Defendant, when to be held or discharged.

SEC. 1373. A motion in arrest of judgment is an application on the part of the defendant that no judgment be rendered on a plea or verdict of guilty, or on a verdict against the defendant, on a plea of a former conviction or acquittal. It may be founded on any of the defects in the indictment or information mentioned in Section 1185, unless the objection has been waived by a failure to demur, and must be made before or at the time the defendant is called for judgment.

SEC. 1374. The court may also, on its own view of any of these defects, arrest the judgment without motion.

SEC. 1375. The effect of allowing a motion in arrest of judgment is to place the defendant in the same situation in which he was before the indictment was found or information filed.

SEC. 1376. If, from the evidence on the trial, there is reason to believe the defendant guilty, and a new indictment or information can be framed upon which he may be convicted, the court may order him to be recommitted to the officer of the proper county, or admitted to bail anew, to answer the new indictment or information. If the evidence shows him guilty of another offense, he must be committed or held thereon, and in neither case shall the verdict be a bar to another prosecution. But if no evidence appears sufficient to charge him with any offense, he must, if in custody, be discharged; or if admitted to bail, his bail must be exonerated; or if money has been deposited instead of bail, it must be refunded to the defendant; and the arrest of judgment shall operate as an acquittal of the charge upon which the indictment or information was founded.

TITLE VII.

JUDGMENT AND EXECUTION.

Chapter I. The judgment.
" II. The execution.

CHAPTER I.

THE JUDGMENT.

Section 1380. Appointing time for judgment.
" 1381. Upon plea of guilty, court must determine degree.
" 1382. Presence of defendant.
" 1383. Defendant in custody, how brought for judgment.

Section 1384. How brought before the court when on bail.
" *1385. Bench warrant to issue.*
" *1386. Form of bench warrant.*
" *1387. Warrant, how served.*
" *1388. Arrest of defendant.*
" *1389. Arraignment of defendant for judgment.*
" *1390. What cause may be shown against the judgment.*
" *1391. If no cause shown, judgment to be pronounced.*
" *1392. Circumstances in aggravation or mitigation of punishment.*
" *1393. Proof of former conviction, etc., in mitigation, how made.*
" *1394. Duration of imprisonment on judgment to pay a fine.*
" *1395. Prosecutor to pay costs.*
" *1396. Discharge of pauper prisoner.*
" *1397. Discharge in other cases.*
" *1398. Judgment to pay fine constitutes a lien.*
" *1399. Entry of judgment and judgment roll.*

SEC. 1380. After a plea or verdict of guilty, or after a verdict against the defendant on the plea of a former conviction or acquittal, if the judgment be not arrested or a new trial granted, the court must appoint a time for pronouncing judgment, which, in cases of felony, must be at least two days after the verdict, if the court intend to remain in session so long; but if not, then at as remote a time as can reasonably be allowed.

SEC. 1381. Upon a plea of guilty of a crime distinguished or divided into degrees, the court must, before passing sentence, determine the degree.

SEC. 1382. For the purpose of judgment, if the conviction is for felony, the defendant must be personally present; if for a misdemeanor, judgment may be pronounced in his absence.

SEC. 1383. When the defendant is in custody, the court may direct the officer in whose custody he is to bring him before it for judgment, and the officer must do so.

SEC. 1384. If the defendant has been discharged on bail, or has deposited money instead thereof, and does not appear for judgment when his personal appearance is necessary, the court, in addition to the forfeiture of the undertaking of bail, or of the money deposited, may direct the clerk to issue a warrant for his arrest.

SEC. 1385. The clerk, on the application of the county attorney may, at any time after the order, whether court be sitting or not, issue a warrant into one or more counties.

SEC. 1386. The warrant must be substantially in the following form: ——— District in and for the County of ———. The State of Montana, to any sheriff, constable, marshal, or policeman in this State: A. B., having been on the ———

day of ——— A. D. eighteen hundred and ———, duly convicted in the District Court of the County of ———, of the crime of ——— (designating it generally), you are therefore commanded forthwith to arrest the above named A. B., and bring him before that court for judgment. Given under my hand with the seal of said court affixed, this —— day of ——, A. D., eighteen hundred and ——. By order of the Court.

[Seal.] E. F., Clerk.

SEC. 1387. The warrant may be served in any county in the same manner as a warrant of arrest, except that when served in another county it need not be indorsed by the magistrate of that county.

SEC. 1388. Whether the warrant is served in the county in which it was issued or in another county, the officer must arrest the defendant and bring him before the court, or commit him to the officer mentioned in the warrant, according to the command thereof.

SEC. 1389. When the defendant appears for judgment, he must be informed by the court, or by the clerk, under its direction, of the nature of the charge against him, and of his plea, and the verdict, if any thereon, and must be asked whether he has any legal cause to show why judgment should not be pronounced against him.

SEC. 1390. He may show, for cause against the judgment:

1. That he is insane; and if, in the opinion of the court, there is reasonable ground for believing him to be insane, the question of insanity must be tried as provided in Chapter VI., Title X., Part II., of this Code. If, upon the trial of that question, the jury find that he is sane, judgment must be pronounced, but if they find him insane, he must be committed to the State insane asylum until he becomes sane; and when notice is given of that fact, as provided in Section 1578, he must be brought before the court for judgment.

2. That he has good cause to offer, either in arrest of judgment or for a new trial; in which case the court may, in its discretion, order the judgment to be deferred, and proceed to decide upon a motion in arrest of judgment or for a new trial.

SEC. 1391. If no sufficient cause is alleged or appears to the court why judgment should not be pronounced, it must thereupon be rendered.

SEC. 1392. After a plea or verdict of guilty, where a discretion is conferred upon the court as to the extent of the punishment, the court, upon the oral suggestion of either party that there are circumstances which may be properly taken into view, either in aggravation or mitigation of the punishment, may, in its discretion, hear the same summarily, at a specified time, and upon such notice to the adverse party as it may direct.

SEC. 1393. The circumstances must be presented by the testimony of witnesses examined in open court, except that when a witness is so sick or infirm as to be unable to attend, his deposition may be taken by a magistrate of the county, out of court, upon such notice to the adverse party as the court may direct. No affidavit or testimony, or representation of any kind, verbal or written, can be offered to or received by the court, or a judge thereof, in aggravation or mitigation of the punishment, except as provided in this and the preceding section.

SEC. 1394. A judgment that the defendant pay a fine and costs may also direct that he be imprisoned until both fine and costs are satisfied, specifying the extent of the imprisonment, which must not exceed one day for every two dollars of the fine and costs.

SEC. 1395. A judgment that the prosecutor pay the costs, may be rendered in cases provided for in this Code, and execution may issue thereon as in other cases.

SEC. 1396. When judgment of fine and costs is entered against a defendant, and it is ordered that he be committed until the same are paid, if at any time thereafter the defendant prove to the court, or judge thereof, by his own affidavit or that of any other person, that he is unable to pay such fine and costs, or any part thereof, the court, or judge thereof, may order the sheriff to release him upon his having been confined in jail one day for every two dollars of such fine and costs, or any portion thereof remaining unpaid; but if the defendant do not prove to the satisfaction of the court, or judge thereof, that he is unable to pay such fine and costs, or any part thereof, he shall not be released from confinement, except as hereinafter provided, unless the sheriff has made the same upon execution out of his property.

SEC. 1397. Whenever any defendant is committed to jail for the failure to pay any fine and costs adjudged against him, and has failed to prove to the satisfaction of the court or judge thereof, that he is unable to pay the same, or any part thereof, the court must order that he be discharged from custody when he has served one day for every two dollars of such fine and costs; but this does not discharge the judgment for fine and costs, which may at any time thereafter, within the time limited by law, be collected upon execution issued thereon.

SEC. 1398. A judgment that the defendant pay a fine or costs constitutes a lien upon the real estate of the defendant, which lien dates from the date of the defendant's arrest.

SEC. 1399. When judgment upon a conviction is rendered, the clerk must enter the same in the minutes, stating briefly the offense for which the conviction was had, and the fact of a prior conviction (if one), and must, within five days, annex together and file the following papers, which will constitute a record of the action:

1. The indictment or information, and a copy of the minutes of the plea or demurrer.
2. A copy of the minutes of the trial.
3. The charges given or refused, and the indorsements thereon. And,
4. A copy of the judgment.

CHAPTER II.

THE EXECUTION.

Section 1405. Execution of a judgment other than of death.
" 1406. If for fine alone, execution to issue as in civil cases.
" 1407. Judgment of fine and imprisonment, how executed.
" 1408. Judgment of imprisonment. Duty of sheriff.
" 1409. Power of officer.
" 1410. Sentence to hard labor.
" 1411. Execution upon judgment of death.
" 1412. Judgment of death, when suspended.
" 1413. Insanity of defendant, how determined.
" 1414. Duty of county attorney upon inquisition.
" 1415. Inquisition, how certified and filed.
" 1416. Proceedings upon finding of jury.
" 1417. Proceedings when female is supposed to be pregnant.
" 1418. Proceedings upon the finding of the jury.
" 1419. Judgment of death remaining in force, not executed.
" 1420. Punishment of death, how inflicted.
" 1421. Execution, where to take place and who to be present.
" 1422. Return upon death warrant.

SEC. 1405. When a judgment, other than of death, has been pronounced, a certified copy of the entry thereof upon the minutes must be forthwith furnished to the officer whose duty it is to execute the judgment, and no other warrant or authority is necessary to justify or require its execution.

SEC. 1406. If the judgment is for a fine alone, execution may be issued thereon as on a judgment in a civil action.

SEC. 1407. If the judgment is for imprisonment, or a fine and imprisonment until it be paid, the defendant must forthwith be committed to the custody of the proper officer, and by him detained until the judgment is complied with.

SEC. 1408. If the judgment is for imprisonment in the State prison, the sheriff of the county must, upon receipt of a certified copy thereof, take and deliver the defendant to the warden of the State prison. He must also deliver to the warden the certified copy of the judgment, and take from the warden a receipt for the defendant.

SEC. 1409. Such sheriff or deputy, while conveying the criminal to the place of punishment, has the same power and like authority to require the assistance of any citizen of the State in securing such criminal, and retaking him if he escapes, as such sheriff or deputy has in any other case; and all persons who neglect or refuse to assist such sheriff or deputy, when required, are liable to the same penalties as for similar refusals in other cases.

SEC. 1410. In all cases of conviction for felony, the court sentencing any person convicted, must attach to the sentence of imprisonment the provision that such imprisonment be at hard labor; and whenever a jury designate in their verdict any term of imprisonment, the same means imprisonment at hard labor.

SEC. 1411. When judgment of death is rendered, a warrant signed by the judge, and attested by the clerk under the seal of the court, must be drawn and delivered to the sheriff. It must state the conviction and judgment, and appoint a day on which the judgment is to be executed, which must not be less than thirty nor more than sixty days from the time of the judgment.

SEC. 1412. No judge, court, or officer, other than the Governor, can suspend the execution of a judgment of death, except the sheriff, as provided in the six succeeding sections, unless an appeal is taken.

SEC. 1413. If, after judgment of death, there is good reason to suppose that the defendant has become insane, the sheriff of the county, with the concurrence of the judge of the court by which the judgment was rendered, may summon from the list of jurors selected for the year, a jury of twelve persons to inquire into the supposed insanity, and must give immediate notice thereof to the county attorney of the county.

SEC. 1414. The county attorney must attend the inquisition, and may produce witnesses before the jury, for which purpose he may issue process in the same manner as for witnesses to attend before the grand jury, and disobedience thereto may be punished in like manner as disobedience to process issued by the court.

SEC. 1415. A certificate of the inquisition must be signed by the jurors and the sheriff, and filed with the clerk of the court in which the conviction was had.

SEC. 1416. If it is found by the inquisition that the defendant is sane, the sheriff must execute the judgment; but if it is found that he is insane, the sheriff must suspend the execution of the judgment until he receives a warrant from the Governor or from the judge of the court by which the judgment was rendered directing the execution of the judgment. If the inquisition finds that the defendant is insane, the sheriff must immediately transmit it to the Governor, who may, when the defendant becomes sane, issue a warrant appointing a day for the execution of the judgment.

SEC. 1417. If there is good reason to suppose that a woman against whom a judgment of death is rendered is pregnant, the sheriff of the county, with the concurrence of the judge of the court by which the judgment was rendered, may summon a jury of three physicians to inquire into the supposed pregnancy. Immediate notice thereof must be given to the county attorney of the county, and the provisions of Section 1414 and 1415 apply to the proceedings upon the inquisition.

SEC. 1418. If it is found by the inquisition that the woman is not pregnant, the sheriff must execute the judgment; if it is found that the woman is pregnant, the sheriff must suspend the execution of the judgment, and transmit the inquisition to the Governor. When the Governor is satisfied that the woman is no longer pregnant, he may issue his warrant appointing a day for the execution of the judgment.

SEC. 1419. If for any reason a judgment of death has not been executed, and it remains in force, the court in which the conviction was had, on the application of the county attorney, must order the defendant to be brought before it, or, if he is at large, a warrant for his apprehension may be issued. Upon the defendant being brought before the court, it must inquire into the facts, and if no legal reasons exist against the execution of the judgment, must make an order that the sheriff execute the judgment at a specified time. The sheriff must execute the judgment accordingly.

SEC. 1420. The punishment of death must be inflicted by hanging the defendant by the neck until he is dead.

SEC. 1421. A judgment of death must be executed within the walls or yard of a jail, or some convenient private place in the county. The sheriff of the county must be present at the execution, and must invite the presence of a physician, the county attorney of the county, and at least twelve reputable citizens, to be selected by him; and he shall, at the request of the defendant, permit such priests or ministers of the gospel, not exceeding two, as the defendant may name, and any persons, relatives or friends, not to exceed five, to be present at the execution, together with such peace officers as he may think expedient, to witness the execution. But no other persons than those mentioned in this section can be present at the execution, nor can any person under age be allowed to witness the same.

SEC. 1422. After the execution, the sheriff must make a return upon the death-warrant, showing the time, mode, and manner, in which it was executed.

TITLE IX.

APPEALS TO THE SUPREME COURT.

Chapter I. Appeals, when allowed and how taken, and the effect thereof.
" II. Dismissing an appeal for irregularity.
" III. Argument of the appeal.
" IV. Judgment upon appeal.

CHAPTER I.

APPEALS, WHEN ALLOWED AND HOW TAKEN, AND THE EFFECT THEREOF.

Section 1430. Appeal, by whom taken, on questions of law alone.
" 1431. Parties, how designated on appeal.
" 1432. Appeal, when may be taken by the defendant.
" 1433. In what cases by the State.
" 1434. Appeals, within what time to be taken.
" 1435. Appeal, how taken.
" 1436. When notice may be served by publication.
" 1437. Effect of an appeal by the State.
" 1438. Effect of appeal by the defendant.
" 1439. Same.
" 1440. Same.
" 1441. Duty of clerks upon appeal.
" 1442. Appeal when tried.
" 1443. Appeal by one defendant.

SEC. 1430. An appeal to the Supreme Court may be taken by the defendant, as a matter of right, from any judgment against him.

SEC. 1431. The party appealing is known as the appellant, and the adverse party as the respondent, but the title of the action is not changed in consequence of the appeal.

SEC. 1432. An appeal may be taken by the defendant:

1. From a final judgment of conviction.

2. From an order denying a motion for a new trial.

3. From an order made after judgment, affecting the substantial rights of the party.

SEC. 1433. An appeal may be taken by the State:

1. From a judgment for the defendant on a demurrer to the indictment or information.

2. From an order granting a new trial.

3. From an order arresting judgment.

4. From any order made after judgment, affecting the substantial rights of the State.

5. From an order of the court directing the jury to find for the defendant.

SEC. 1434. An appeal from a judgment may be taken within one year after its rendition, and from an order within sixty days after it is made.

SEC. 1435. An appeal may be taken by filing with the clerk of the court in which the judgment or order appealed from is entered or filed, a notice stating the appeal from the same, and serving a copy thereof upon the attorney of the adverse party.

SEC. 1436. If personal service cannot be made, the judge of the court in which the action is tried, upon proof thereof, may make an order for the publication of the notice in some newspaper, for a period of not exceeding thirty days. Such publication is equivalent to personal service.

SEC. 1437. An appeal taken by the State in no case stays or affects the operation of the judgment in favor of the defendant until judgment is reversed.

SEC. 1438. An appeal to the supreme court from a judgment of conviction, stays the execution of the judgment in all capital cases, and in all other cases upon filing with the clerk of the court in which the conviction was had, a certificate of the judge of such court, or of a justice of the Supreme Court, that in his opinion, there is probable cause for the appeal, but not otherwise.

SEC. 1439. If the certificate provided for in the preceding section is filed, the sheriff must, if the defendant be in his custody, upon being served with a copy thereof, keep the defendant in his custody without executing the judgment, and detain him to abide the judgment on appeal.

SEC. 1440. If before the granting of the certificate, the judgment has commenced, the further execution thereof is suspended, and upon service of a copy of such certificate the defendant must be restored, by the officer in whose custody he is, to his original custody.

SEC. 1441. Upon the appeal being taken, the clerk with whom the notice of appeal is filed must, within ten days thereafter, in case the bill of exceptions has been settled by the judge before the giving of said notice, but if not, then within ten days from the settlement of the bill of exceptions, without charge transmit to the clerk of the appellate court a copy of the notice of appeal, and of the record and of all bills of exceptions, instructions, and indorsements thereon; and, upon the receipt thereof, the clerk of the appellate court must file the same, and perform the same services, as in civil cases, without charge.

SEC. 1442. An appeal shall stand for trial immediately after filing the transcript on appeal, if the Supreme Court is in session; if not in session, at the next term thereafter, on proof of notice of appeal to the respondent.

SEC. 1443. When several defendants are tried jointly, any one or more of them may take an appeal; but those who do not join in the appeal shall not be affected thereby.

CHAPTER II.

DISMISSING AN APPEAL FOR IRREGULARITY.

Section 1447. For what irregularity, and how dismissed.
" *1448. Dismissal for want of a return.*
" *1449. Informality in appeal disregarded.*

SEC. 1447. If the appeal is irregular in any substantial particular, but not otherwise, the appellate court may, on any day, on motion of the respondent, upon five days notice, accompanied with copies of the papers upon which the motion is founded, order it to be dismissed. The dismissal of an appeal affirms the judgment.

SEC. 1448. The court may also, upon like motion, dismiss the appeal, if the transcript is not made as provided in Section 1441, unless for good cause they enlarge the time for the purpose.

SEC. 1449. An appeal must not be dismissed for any informality or defect in the taking thereof. If the same be corrected within a reasonable time after an appeal has been dismissed, another appeal may be taken. If an undertaking has been given which is defective in any respect a new one may be filed on appeal, in the supreme court.

CHAPTER III.

ARGUMENT ON THE APPEAL.

Section 1452. Judgment cannot be reversed without argument.
" *1453. Number of counsel to be heard.*
" *1454. Defendant need not be present.*

SEC. 1452. The judgment may be affirmed if the appellant fail to appear, but can be reversed only after argument, though the respondent fail to appear.

SEC. 1453. Upon the argument of the appeal, if the offense is punishable with death, two counsel must be heard on each side, if they require it. In any other case the court may, in its discretion, restrict the argument to one counsel on each side.

SEC. 1454. The defendant need not personally appear in the appellate court.

CHAPTER IV.

JUDGMENT UPON APPEAL.

Section 1457. Judgment without regard to technical errors.
" *1458. What may be reviewed on an appeal by the defendant.*

Section 1459. May reverse, affirm, or modify the judgment, and order a new trial.
" *1460. New trial, where to be had.*
" *1461. Defendant discharged on reversal of judgment.*
" *1462. Judgment to be executed on affirmance.*
" *1463. Judgment of appellate court, how entered and remitted.*
" *1464. Jurisdiction ceases after judgment remitted.*

SEC. 1457. After hearing the appeal, the court must give judgment without regard to technical errors or defects, or to exceptions, which do not affect the substantial rights of the parties.

SEC. 1458. Upon an appeal taken by the defendant from a judgment, the court may review any intermediate order or ruling involving the merits, or which may have affected the judgment.

SEC. 1459. The court may reverse, affirm, or modify the judgment or order appealed from, and may set aside, affirm, or modify any or all of the proceedings subsequent to, or dependent upon such judgment or order, and may, if proper, order a new trial. In either case the cause must be remanded to the District Court with proper instruction, together with the opinion of the court.

SEC. 1460. When a new trial is ordered, it must be directed to be had in the court of the county from which the appeal was taken.

SEC. 1461. If a judgment against the defendant is reversed without ordering a new trial, the appellate court must, if he is in custody, direct him to be discharged therefrom; or if on bail, that his bail be exonerated; or if money was deposited instead of bail, that it be refunded to the defendant.

SEC. 1462. If a judgment against the defendant is affirmed, the original judgment must be enforced.

SEC. 1463. When the judgment of the appellate court is given, it must be entered in the minutes, and a certified copy of the entry forthwith remitted to the clerk of the court from which the appeal was taken.

SEC. 1464. After the certificate of the judgment has been remitted to the court below, the appellate court has no further jurisdiction of the appeal or of the proceedings thereon, and all orders necessary to carry the judgment into effect must be made by the court to which the certificate is remitted.

TITLE X.

MISCELLANEOUS PROCEEDINGS.

Chapter I. Bail.
" *II. Who may be witnesses in criminal actions.*
" *III. Compelling the attendance of witnesses.*

Chapter IV. Examination of witnesses conditionally.
" V. Examination of witnesses on commission.
" VI. Inquiry into the insanity of the defendant before trial or after conviction.
" VII. Compromising certain public offenses by leave of the court.
" VIII. Dismissal of the action, before or after indictment, for want of prosecution or otherwise.
" IX. Proceedings against corporations.
" X. Entitling affidavits.
" XI. Errors and mistakes in pleadings and other proceedings.
" XII. Disposal of property, stolen or embezzled.
" XIII. Reprieves, commutations and pardons.
" XIV. Proceedings in bastardy.

CHAPTER I.

BAIL.

Article I. In what cases the defendant may be admitted to bail.
" II. Bail upon being held to answer before information.
" III. Bail upon indictment or information before conviction.
" IV. Bail on appeal.
" V. Deposit instead of bail.
" VI. Surrender of the defendant.
" VII. Forfeiture of the undertaking of or bail of the deposit of money.
" VIII. Recommitment of the defendant after having given bail or deposited money instead of bail.

ARTICLE I.

IN WHAT CASES THE DEFENDANT MAY BE ADMITTED TO BAIL.

Section 1470. Admission to bail defined.
" 1471. Taking of bail defined.
" 1472. Offense not bailable.
" 1473. Defendant when admitted to bail before conviction.
" 1474. When admitted to bail after conviction and upon appeal.
" 1475. Nature of bail.
" 1476. When bail is matter of discretion, notice of application must be given to county attorney.

SEC. 1470. Admission to bail is the order of a competent court or magistrate that the defendant be discharged from actual custody upon bail.

SEC. 1471. The taking of bail consists in the acceptance, by a competent court or magistrate, or legally authorized officer, of the undertaking of sufficient bail for the appearance of the defendant, according to the terms of the undertaking, or that the bail will pay to the State a specified sum.

SEC. 1472. A defendant charged with an offense punishable with death cannot be admitted to bail, when the proof of his guilt is evident or the presumption thereof great. The finding of an indictment or the filing of an information does not add to the strength of the proof or the presumptions to be drawn therefrom.

SEC. 1473. If the charge is for any other offense, he may be admitted to bail before conviction, as a matter of right.

SEC. 1474. After conviction of an offense not punishable with death, a defendant who has appealed may be admitted to bail—

1. As a matter of right, when the appeal is from a judgment imposing a fine only.

2. As a matter of discretion in all other cases.

SEC. 1475. If the offense is bailable, the defendant may be admitted to bail before conviction—

1. For his appearance before the magistrate during the pendency of a trial or on the examination of the charge, before being held to answer.

2. To appear at the court to which the magistrate is required to return the complaint, testimony and statement, upon the defendant being held to answer after examination.

3. After indictment or information filed, either before the warrant is issued for his arrest, or upon any order of the court committing him, or enlarging the amount of bail, or upon his being surrendered by his bail to answer the indictment or information in the court in which it is found or filed, or to which it may be transferred for trial.

And after conviction, and upon an appeal—

1. If the appeal is from a judgment imposing a fine only, on the undertaking of bail that he will pay the same or such part thereof as the appellate court may direct, if the judgment is affirmed or modified, or the appeal is dismissed.

2. If the judgment of imprisonment has been given, that he will surrender himself in execution of the judgment, upon its being affirmed or modified, or upon the appeal being dismissed, or that in case the judgment be reversed, and that the cause be remanded for a new trial, that he will appear in the court to which said cause may be remanded, and submit himself to the orders and process thereof.

SEC. 1476. When the admission to bail is a matter of discretion the court or officer to whom the application is made must require reasonable notice thereof to be given to the county attorney of the county.

ARTICLE II.

BAIL UPON BEING HELD TO ANSWER BEFORE INFORMATION.

Section 1480. What magistrates may admit to bail.
" *1481. Bail, how put in, and form of the undertaking.*
" *1482. Qualifications of bail.*
" *1483. Bail, how to justify.*
" *1484. On allowance of bail, defendant to be discharged.*

SEC. 1480. When the defendant has been held to answer upon an examination for a public offense, the admission to bail may be by the magistrate by whom he is so held, or by any magistrate who has power to issue the writ of habeas corpus.

SEC. 1481. Bail is put in by a written undertaking, executed by two sufficient sureties (with or without the defendant, in the discretion of the magistrate), and acknowledged before the court or magistrate, in substantially the following form:

"An order having been made on the——day of——, A. D., eighteen——, by A. B., a justice of the peace of ——county (or as the case may be), that C. D. be held to answer upon a charge of (stating briefly the nature of the offense), upon which he has been admitted to bail in the sum of——dollars; we, E. F. and G. H. (stating their place of business and occupation), hereby undertake that the above named C. D. will appear and answer the charge above mentioned, in whatever court it may be prosecuted, and will at all times hold himself amenable to the orders and process of the court, and if convicted, will appear for judgment, and render himself in execution thereof; or, if he fails to perform either of these conditions, that we will pay to the State of Montana the sum of——dollars" (inserting the sum in which the defendant is admitted to bail).

SEC. 1482. The qualifications of bail are as follows:

1. Each of them must be a resident, householder, or freeholder within the State, but the court or magistrate may refuse to accept any person as bail who is not a resident of the county where bail is offered.

2. They must each be worth the amount specified in the undertaking, exclusive of property exempt from execution; but the court or magistrate, on taking bail, may allow more than two sureties to justify severally in amounts less than that expressed in the undertaking, if the whole justification be equivalent to that of sufficient bail.

SEC. 1483. The bail must in all cases justify by affidavit taken before the magistrate that they each possess the qualifications provided in the preceding section. The magistrate may further examine the bail upon oath concerning their sufficiency, in such manner as he may deem proper.

SEC. 1484. Upon the allowance of bail and the execution of the undertaking, the magistrate must, if the defendant is in custody, make and sign an order for his discharge, upon the delivery of which to the proper officer, the defendant must be discharged.

ARTICLE III.

BAIL UPON AN INDICTMENT OR INFORMATION BEFORE CONVICTION.

Section 1488. When the offense is not capital.
" *1489. Clerk must indorse warrant.*
" *1490. When the offense is capital.*
" *1491. Bail of habeas corpus.*
" *1492. Form of undertaking.*
" *1493. Sections applicable to qualifications, etc.*
" *1494. Increase or reduction of bail.*

SEC. 1488. When the offense charged is not punishable with death, the court at the time the indictment is presented and filed, or information filed, must make an order, to be entered in the minutes, fixing the amount in which the defendant may be admitted to bail, unless the court indorse such order on the warrant.

SEC. 1489. When the order fixing the amount of the bail is entered in the minutes, the clerk must indorse the same on the warrant.

SEC. 1490. If the offense charged is punishable with death, the officer arresting the defendant must deliver him into custody, according to the command of the warrant.

SEC. 1491. When the defendant is so delivered into custody, he must be held by the sheriff, unless admitted to bail on examination upon a writ of habeas corpus.

SEC. 1492. The bail must be put in by a written undertaking, executed by two sufficient sureties, (with or without the defendant, in the discretion of the court or magistrate) and acknowledged before the court or magistrate, in substantially the following form:

"An indictment (or information) having been found (or filed) on the —— day of ——, A. D., eighteen ———, in the District Court of the ——— District in and for the County of ———, charging A. B. with the crime of ———, (designating it generally) and he having been admitted to bail in the sum of ——— dollars, we, C. D. and E. F., of ——— (stating their place of residence and occupation), hereby undertake that the above named A. B. will appear and answer the indictment (or information) above mentioned, in whatever court it may be prosecuted, and will at all times surrender himself amenable to the orders and process of the court, and, if convicted, will appear for judgment and render himself in execution therefor; or, if he fails to perform either of these conditions, that we will pay to the State of Montana, the sum of —— dollars," (inserting the sum in which the defendant is admitted to bail.)

SEC. 1493. The provisions contained in Sections 1482, 1483 and 1484 apply to bail after indictment or information.

SEC. 1494. After a defendant has been admitted to bail upon an indictment or information, the court in which the charge is pending, may upon good cause shown, either increase or reduce the amount of bail. If the amount be increased, the court may order the defendant to be committed to actual custody, unless he give bail in such increased amount. If application be made by the defendant for a reduction of the amount, notice of the application must be served upon the county attorney.

ARTICLE IV.

BAIL ON APPEAL.

Section 1496. Who may admit to bail.
" 1497. Bail, qualifications of, and condition of undertaking.

SEC. 1496. In cases in which defendant may be admitted to bail upon an appeal, the order admitting him to bail may be made by any magistrate having the power to issue a writ of habeas corpus, or by the magistrate before whom the trial was had.

SEC. 1497. The bail must possess the qualifications, and must be put in, in all respects, as provided in Article II. of this chapter, except that the undertaking must be conditioned as prescribed in Section 1475 for undertakings of bail on appeal.

ARTICLE V.

DEPOSIT INSTEAD OF BAIL.

Section 1499. Deposit, when and how made.
" 1500. May, after bail is given and before forfeiture.
" 1501. Deposit to be applied to payment of judgment and fine.

SEC. 1499. The defendant, at any time after an order admitting him to bail, instead of giving bail, may deposit with the clerk of the court in which he is held to answer, the sum mentioned in the order, and upon delivering to the officer in whose custody he is a certificate of the deposit, he must be discharged from custody.

SEC. 1500. If the defendant has given bail, he may, at any time before the forfeiture of the undertaking, in like manner deposit the sum mentioned therein, and upon the deposit being made the bail is exonerated.

SEC. 1501. When money has been deposited, if it remains on deposit at the time of a judgment for the payment of a fine, the clerk must, under direction of the court, apply the money in satisfaction thereof, and after satisfying the fine and costs, must refund the surplus, if any, to the defendant.

ARTICLE VI.

SURRENDER OF THE DEFENDANT.

Section 1503. Surrender, by whom, when, and how made.
" 1504. Defendant, how surrendered.
" 1505. Return of deposit on surrender.

SEC. 1503. At any time before the forfeiture of their undertaking the bail may surrender the defendant in their exoneration, or he may surrender himself to the officer to whose custody he was committed at the time of giving bail, in the following manner:

1. A certified copy of the undertaking of the bail must be delivered to the officer, who must detain the defendant in his custody thereon as upon a commitment, and by a certificate in writing acknowledging the surrender.

2. Upon the undertaking and certificate of the officer, the court in which the action or appeal is pending may, upon notice of five days to the county attorney, with a copy of the undertaking and certificate, order that the bail be exonorated, and on filing the order and the papers used on the application, they are exonerated accordingly.

SEC. 1504. For the purpose of surrendering the defendant, the bail, at any time before they are finally discharged, and at any place within the State, may themselves arrest him, or by a written authority, indorsed on a certified copy of the undertaking, may empower any person of suitable age and discretion to do so.

SEC. 1505. If money has been deposited instead of bail, and the defendant, at any time before the forfeiture thereof, surrenders himself to the officer to whom the commitment was directed, in the manner provided in the last two sections, the court must order a return of the deposit to the defendant, upon producing the certificate of the officer showing the surrender, and upon a notice of five days to the county attorney, with a copy of the certificate.

ARTICLE VII.

FORFEITURE OF THE UNDERTAKING OF BAIL OR OF THE DEPOSIT OF MONEY.

Section 1507. How forfeited, and how forfeiture discharged.
" 1508. Default of person under bail.
" 1509. Surrender of defendant.

Section 1510. What will not bar action on bond.
" 1511. Forfeiture to be enforced by action.
" 1512. Liability of real estate.
" 1513. Deposit, when forfeited, how disposed of.

SEC. 1507. If, without sufficient excuse, the defendant neglects to appear for arraignment or for trial or judgment, or upon any other occasion when his presence in court may be lawfully required, or to surrender himself in execution of the judgment, the court must direct the fact to be entered upon its minutes, and the undertaking of bail, or the money deposited instead of bail, as the case may be, is thereupon forfeited. But if at any time before the final adjournment of the court, the defendant or his bail appear and satisfactorily excuse his neglect, the court may direct the forfeiture of the undertaking, or the deposit to be discharged upon such terms as may be just.

SEC. 1508. When any person under bond or undertaking in any criminal action or proceeding, either to appear and answer, or to prosecute an appeal, or to testify in any court, fails to perform the condition of such bond or undertaking, his default must be entered in the minutes, and judgment entered against him for the amount of such bond or undertaking, and proceedings may be taken to recover judgment against any or all of the sureties thereto in any court having jurisdiction.

SEC. 1509. Any surety on such bond or undertaking may be discharged from any liability thereon, at any time before final judgment against him, upon surrendering to the court or the proper officer the principal in such bond or undertaking, or by paying to the clerk of the court the amount for which he was bound as surety, with such costs as the court shall direct.

SEC. 1510. No action brought on a bond or undertaking is barred or defeated, nor shall judgment thereon be arrested by reason of any neglect or omission to note or record the default of any principal or surety at the term or session when such default happened, nor by reason of any defect in the form of the bond or undertaking, if it sufficiently appears, from the tenor thereof, at what court the party or witness was bound to appear, and that the court or magistrate before whom it was taken, was authorized by law to require and take the same.

SEC. 1511. If the forfeiture is not discharged, as provided in this article, the county attorney may at any time proceed by action only against the bail upon their undertaking.

SEC. 1512. The real estate of all persons who sign or enter into any undertaking for the appearance of a person charged with any criminal offense is liable for the payment of any judgment which may be recovered thereon, and the judgment is a lien upon the property from the date of the undertaking.

Nothing in this section prohibits the issuing of execution and the enforcing the collection thereof out of any other property of the sureties.

SEC. 1513. If, by reason of the neglect of the defendant to appear, money deposited instead of bail is forfeited, and the forfeiture is not discharged or remitted, the clerk with whom it is deposited must, immediately after the final adjournment of the court for the term or session, pay over the money deposited to the county treasurer.

ARTICLE VIII.

RECOMMITMENT OF THE DEFENDANT, AFTER HAVING GIVEN BAIL OR DEPOSITED MONEY INSTEAD OF BAIL.

Section 1518. In what cases.
" *1519. Contents of order.*
" *1520. Defendant may be arrested in any county.*
" *1521. If for failure to appear, defendant must be committed.*
" *1522. If for other cause, he may be admitted to bail.*
" *1523. Bail in such case, by whom taken.*
" *1524. Form of the undertaking.*
" *1525. Bail must possess what qualifications, and how put in.*

SEC. 1518. The court to which the committing magistrate returns the complaint, or in which an indictment, information or appeal is pending, or to which a judgment on appeal is remitted to be carried into effect, may, by an order entered upon its minutes, direct the arrest of the defendant and his commitment to the officer to whose custody he was committed at the time of giving bail, and his detention until legally discharged, in the following cases:

1. When, by reason of his failure to appear, he has incurred a forfeiture of his bail, or of money deposited instead thereof.

2. When it is satisfactorily appears to the court that his bail, or either of them, are dead or insufficient, or have removed from the State.

3. Upon an indictment being found or information filed.

SEC. 1519. The order for the recommitment of the defendant must recite generally the facts upon which it is founded, and direct that the defendant be arrested by any sheriff, constable, marshal, or policeman, in this State, and committed to the officer in whose custody he was at the time he was admitted to bail, to be detained until legally discharged.

SEC. 1520. The defendant may be arrested pursuant to the order, upon a certified copy thereof, in any county, in the same manner as upon a warrant of arrest.

SEC. 1521. If the order recites, as the ground upon which it is made, the failure of the defendant to appear for judgment upon conviction, the defendant must be committed according to the requirement of the order.

SEC. 1522. If the order be made for any other cause and the offense is bailable, the court may fix the amount of bail, and may cause a direction to be inserted in the order that the defendant be admitted to bail in the sum fixed, which must be specified in the order.

SEC. 1523. When the defendant is admitted to bail, the bail may be taken by any magistrate in the county having authority in a similar case to admit to bail, upon the holding of the defendant to answer before information filed by any other magistrate designated by the court.

SEC. 1524. When bail is taken upon the recommitment of the defendant, the undertaking must be substantially in the following form:

"An order having been made on the——day of——A. D. eighteen——, by the court (naming it) that A. B. be admitted to bail in the sum of——dollars, in an action pending in that court against him in behalf of the State of Montana, upon an (information, indictment, or appeal, as the case may be), we, C. D. and E. F., of (stating their places of residence and occupation), hereby undertake that the above named A. B. will appear in that or any other court in which his appearance may be lawfully required, upon the (information, indictment, or appeal, as the case may be) and will at all times render himself amenable to its orders and process, and appear for judgment and surrender himself in execution thereof; or, if he fails to perform either of these conditions, that we will pay to the State of Montana the sum of——dollars;" (insert the sum in which the defendant is admitted to bail.)

SEC. 1525. The bail must possess the qualifications, and must be put in, in all respects, in the manner prescribed in Article II. of this chapter.

CHAPTER II.

WHO MAY BE WITNESSES IN CRIMINAL ACTIONS.

Section 1527. Who are competent witnesses.
" 1528. When husband and wife are not competent witnesses.
" 1529. When the defendant is not a competent witness, and when he may testify.
" 1530. Testimony of one not to be used against the other.

SEC. 1527. The rules for determining the competency of witnesses in civil actions are applicable also to criminal actions and proceedings, except as otherwise provided in this Code.

SEC. 1528. Except with the consent of both, or in cases of criminal violence upon one by the other, neither husband nor wife is a competent witness for or against the other in a criminal action or proceeding to which one or both are parties.

SEC. 1529. A defendant in a criminal action or proceeding cannot be compelled to be a witness against himself; but he may be sworn, and may testify in his own behalf, and the jury in judging of his credibility and the weight to be given to his testimony, may take into consideration the fact that he is the defendant, and the nature and enormity of the crime of which he is accused. If the defendant does not claim the right to be sworn, or does not testify, it must not be used to his prejudice, and the attorney prosecuting must not comment to the court or jury on the same.

SEC. 1530. When two or more persons are jointly, or otherwise, concerned in the commission of an offense, any one of such persons may testify for or against the other in relation to the offense committed, but the testimony of such witness must not be used against him in any criminal action or proceeding.

CHAPTER III.

COMPELLING THE ATTENDANCE OF WITNESSES.

Section 1533. Subpoena defined, and who may issue.
" 1534. Form of subpoena.
" 1535. Subpoena, by whom and how served.
" 1536. Expenses of witness from without the county, or poor.
" 1537. Attendance of witness residing or served out of the county.
" 1538. Disobedience to subpoena, etc.
" 1539. Failure to appear, undertaking forfeited.
" 1540. Temporary removal of imprisoned witnesses.

SEC. 1533. The process by which the attendance of a witness before a court or magistrate is required is a subpoena. It may be signed and issued by—

1. A magistrate before whom a complaint is laid, for witnesses in the State, either on behalf of the State or of the defendant.

2. The county attorney, for witnesses in the State, in support of the prosecution, or for such other witnesses as the grand jury, upon an investigation pending before them, may direct.

3. The county attorney, for witnesses in the State, in support of an indictment or information, to appear before the court in which it is to be tried.

4. The clerk of the court in which an indictment or information is to be tried; and he must, at any time, upon application of the defendant, and without charge, issue as many blank subpoenas, subscribed by him as clerk, for witnesses in the State, as the defendant may require.

SEC. 1534. A subpoena authorized by the last section must be substantially in the following form:

"The State of Montana to A. B.:

"You are commanded to appear before C. D., a justice of the peace of———township, in———county, (or as the case may be) at (naming the place), on (stating the day and hour), as a witness in a criminal action prosecuted by the State of Montana, against E. F.

"Given under my hand this———day of———A. D. eighteen ———, G. H., justice of the peace," (or "J. K. county attorney," or "by order of the court, L. M., clerk;" or as the case may be). If books, papers, or documents are required a direction to the following effect must be contained in the subpoena: "And you are required also, to bring with you the following" (describing intelligibly the books, papers, or documents required.)

SEC. 1535. A subpoena may be served by any person, but a peace officer must serve in his county any subpoena delivered to him for service, either on the part of the State or of the defendant, and must, without delay, make a written return of the service, subscribed by him, stating the time and place of service. The service is made by showing the original to the witness personally, and informing him of its contents.

SEC. 1536. When a person attends before a magistrate, grand jury, or court, as a witness in a criminal case, upon a subpoena or in pursuance of an undertaking, and it appears that he has come from a place outside of the county, or that he is poor and unable to pay the expenses of such attendance, the court, at its discretion, if the attendance of the witness be upon a trial, by an order upon its minutes, or in any other case, the judge, at his discretion, by a written order, may direct the clerk of the court to draw his warrant upon the county treasurer in favor of such witness for a reasonable sum, to be specified in the order, for the necessary expenses of the witness.

SEC. 1537. No person is obliged to attend as a witness before a court or magistrate out of the county where the witness resides, or is served with the subpoena, unless the judge of the court in which the offense is triable, or a justice of the Supreme Court, or a judge of the District Court, upon an affidavit of the county attorney or prosecutor, or of the defendant, or his counsel, stating that he believes the evidence of the witness is material, and his attendance at the examination, or trial, necessary, shall indorse on the subpoena an order for the attendance of the witness.

SEC. 1538. Disobedience to a subpoena, or a refusal to be sworn or to testify as a witness, may be punished by the court or magistrate as a contempt. A witness disobeying a subpoena issued on the part of the defendant, unless he show good cause for his non-attendance, is liable to the defendant in the sum of one hundred dollars, which may be recovered in a civil action.

SEC. 1539. When a witness has entered into an undertaking to appear, upon his failure to do so the undertaking is forfeited in the same manner as undertakings of bail.

SEC. 1540. When the testimony of a material witness for the State is required in a criminal action, before a court of record of this State, and such witness is a prisoner in the State prison, or in a county jail, an order for his temporary removal from such prison or jail, and for his production before such court, may be made by the court in which the action is pending, or by the judge thereof; but in case the prison or jail is out of the county in which the application is made, such order shall only be made upon affidavit of the county attorney, or other person, on behalf of the State, showing that the testimony is material and necessary; and even then the granting of the order shall be in the discretion of the court or judge. The order must be executed by the sheriff of the county in which it is made, whose duty it shall be to bring the prisoner before the proper court, to safely keep him, and when he is no longer required as a witness, to return him to the prison or jail whence he was taken; the expense of executing such order shall be paid by the county in which the order shall be made.

CHAPTER IV.

EXAMINATION OF WITNESSES CONDITIONALLY.

Section 1543. Witnesses examined conditionally for the defendant.
" *1544. In what cases defendant may apply for the order.*
" *1545. Application, how made.*
" *1546. Application, to whom made.*
" *1547. Order, when granted and what to contain.*
" *1548. Examination in absence of county attorney.*
" *1549. If facts proved, examination not to proceed.*
" *1550. Attendance of witness, how enforced.*
" *1551. Testimony, how taken and authenticated.*
" *1552. Deposition to be transmitted to clerk.*
" *1553. When may be read in evidence. Objections, etc.*
" *1554. Deposition of witness imprisoned in another county.*

SEC. 1543. When a defendant has been held to answer a charge for a public offense, he may, either before or after an information has been filed or after an indictment has been found, have witnesses examined conditionally, on his behalf, as prescribed in this chapter, and not otherwise.

SEC. 1544. When a material witness for the defendant is about to leave the State, or is so sick or infirm as to afford reasonable grounds for apprehending that he will be unable to attend the trial, the defendant may apply for an order that the witness be examined conditionally.

SEC. 1545. The application must be made upon affidavit stating —

1. The nature of the offense charged.
2. The state of the proceedings in the action.
3. The name and residence of the witness, and that his testimony is material to the defense of the action.
4. That the witness is about to leave the State, or is so sick or infirm as to afford reasonable grounds for apprehending that he will not be able to attend the trial.

SEC. 1546. The application may be made to the court, or to a judge thereof, and must be made upon three days' notice to the county attorney.

SEC. 1547. If the court or judge is satisfied that the examination of the witness is necessary, an order must be made that the witness be examined conditionally, at a specified time and place, and that a copy of the order be served on the county attorney, within a time specified before that fixed for the examination.

SEC. 1548. The order must direct that the examination be taken before a magistrate named therein, and on proof being furnished to such magistrate of service upon the county attorney of a copy of the order, if no counsel appear on the part of the State, the examination must proceed.

SEC. 1549. If the county attorney or other counsel appear on behalf of the State, and it is shown to the satisfaction of the magistrate, by affidavit or other proof, or on the examination of the witness, that he is not about to leave the State, or is not sick or infirm, or that the application was made to avoid the examination of the witness on the trial, the examination cannot take place; otherwise it must proceed.

SEC. 1550. The attendance of the witness may be enforced by a subpœna, issued by the magistrate before whom the examination is to be taken.

SEC. 1551. The testimony given by the witness must be reduced to writing, and authenticated in the same manner as a deposition in a civil action.

SEC. 1552. The deposition taken must, by the magistrate, be sealed up and transmitted to the clerk of the court in which the action is pending or may come for trial.

SEC. 1553. The deposition or a certified copy thereof, may be read in evidence by either party on the trial, upon its appearing that the witness is unable to attend, by reason of his death, insanity, sickness, or infirmity, or of his continued absence from the State, and the same objections may be made to the deposition at the trial as if the witness had been examined in court.

SEC. 1554. When a material witness for a defendant, under a criminal charge, is a prisoner in the State prison, or in the county jail of a county other than that in which the defendant is to be tried, his deposition may be taken, on behalf of the defendant, in the manner provided for in the case of a witness who is sick, and the provisions of the Penal Code, commencing with Section 1543 and ending with Section 1553, shall, so far as applicable, govern in the application for and in the taking and use of such deposition. Such deposition may be taken before any magistrate or notary public of the county in which the jail or prison is situate; or in case the witness is confined in the State prison, and the defendant is unable to pay for taking the deposition, before the warden of the State prison, whose duty it shall be to act without compensation. Every officer, before whom testimony shall be taken, by virtue hereof, shall have authority to administer, and shall administer, an oath to the witness that his testimony shall be the truth, the whole truth and nothing but the truth.

CHAPTER V.

EXAMINATION OF WITNESSES ON COMMISSION.

Section 1557. Examination of witness residing out of the State.
" *1558. When defendant may apply for an order to examine.*
" *1559. Commission defined.*
" *1560. Application made on affidavit.*
" *1561. Application, to whom made.*
" *1562. Order for commission, when granted, stay of proceedings.*
" *1563. Interrogatives, how settled and allowed.*
" *1564. Direction as to the return of the commission.*
" *1565. Commission, how executed.*
" *1566. Returned commission, delivered to an agent.*
" *1567. Same.*
" *1568. When and how filed.*
" *1569. Commission and return, open for inspection. Copies, etc.*
" *1570. Depositions to be read in evidence. Objections.*

SEC. 1557. When an issue of fact is joined upon an indictment or information, the defendant may have any material witness, residing out of the State, examined in his behalf, as prescribed in this chapter, and not otherwise.

SEC. 1558. When a material witness for the defendant resides out of the State, the defendant may apply for an order that the witness be examined on a commission.

SEC. 1559. A commission is a process issued under seal of the court and the signature of the clerk, directed to some person designated as commissioner, authorizing him to examine the witness upon oath or interrogatories annexed thereto, to take and certify the deposition of the witness, and to return it according to the directions given with the commission.

SEC. 1560. The application must be made upon affidavit stating—

1. The nature of the offense charged.

2. The state of the proceedings in the action, and that an issue of fact has been joined therein.

3. The name of the witness, and that his testimony is material to the defense of the action.

4. That the witness resides out of the State.

SEC. 1561. The application may be made to the court or a judge thereof, and must be upon three days' notice to the county attorney.

SEC. 1562. If the court to whom the application is made is satisfied of the truth of the facts stated, and that the examination of the witness is necessary to the attainment of justice, an order must be made that a commission be issued to take his testimony; and the court may insert in the order a direction that the trial be stayed for a specified time, reasonably sufficient for the execution and return of the commission.

SEC. 1563. When the commission is ordered, the defendant must serve upon the county attorney, without delay, a copy of the interrogatories to be annexed thereto, with two days' notice of the time at which they will be presented to the court or judge. The county attorney may in like manner serve upon the defendant or his counsel cross-interrogatories, to be annexed to the commission, with the like notice. In the interrogatories either party may insert any questions pertinent to the issue. When the interrogatories and cross-interrogatories are presented to the court or judge, according to the notice given, the court or judge must modify the questions so as to conform them to the rules of evidence, and must indorse upon them his allowance and annex them to the commission.

SEC. 1564. Unless the parties otherwise consent, by an indorsement upon the commission, the court or judge must indorse thereon a direction as to the manner in which it must be returned, and may, in his discretion, direct that it be returned by mail or otherwise, addressed to the clerk of the court in which the action is pending, designating his name and the place where his office is kept.

SEC. 1565. The commissioner, unless otherwise specially directed, may execute the commission as follows:

1. He must publicly administer an oath to the witness that his answers given to the interrogatories shall be the truth, the whole truth, and nothing but the truth.

2. He must cause the examination of the witness to be reduced to writing, and subscribed by him.

3. He must write the answers of the witness as near as possible in the language in which he gives them, and read to him

each answer as it is taken down, and correct or add to it until it conforms to what he declares is the truth.

4. If the witness decline answering a question, that fact, with the reason assigned by him for declining, must be stated.

5. If any papers or documents are produced before him and proved by the witness, they, or copies of them, must be annexed to the deposition subscribed by the witness and certified by the commissioner.

6. The commissioner must subscribe his name to each sheet of the deposition, and annex the deposition, with the papers and documents proved by the witness, or copies thereof, to the commission, and must close it up under seal, and address it as directed by the indorsement thereon.

7. If there be a direction on the commission to return it by mail the commissioner must immediately deposit it in the nearest postoffice. If any other direction be made by the written consent of the parties, or by the court or judge, on the commission, as to its return, the commissioner must comply with the direction. A copy of this section must be annexed to the commission.

SEC. 1566. If the commission and return be delivered by the commissioner to an agent, he must deliver the same to the clerk to whom it is directed, or to the judge of the court in which the action is pending, by whom it may be received and opened, upon the agent making affidavit that he received it from the hands of the commissioner, and that it has not been opened or altered since he received it.

SEC. 1567. If the agent is dead, or from sickness or other casualty unable personally to deliver the commission and return, as prescribed in the last section, it may be received by the clerk or judge from any other person, upon his making affidavit that he received it from the agent, that the agent is dead, or from sickness or other casualty unable to deliver it; that it has not been opened or altered since the person making the affidavit received it; and that he believes it has not been opened or altered since it came from the hands of the commissioner.

SEC. 1568. The clerk or judge receiving and opening the commission and return must immediately file it, with the affidavit mentioned in the last two sections, in the office of the clerk of the court in which the indictment is pending or information filed. If the commission and return is transmitted by mail, the clerk to whom it is addressed must receive it from the postoffice, and open and file it in his office, where it must remain, unless otherwise directed by the court or judge.

SEC. 1569. The commission and return must at all times be open to the inspection of the parties, who must be furnished by the clerk with copies of the same or any part thereof, on payment of his fees.

SEC. 1570. The depositions taken under the commission may be read in evidence by either party on the trial, upon it being shown that the witness is unable to attend from any cause whatever; and the same objections may be taken to a question in the interrogatories or to an answer in the deposition, as if the witness had been examined orally in court.

CHAPTER VI.

INQUIRY INTO THE INSANITY OF THE DEFENDANT BEFORE TRIAL OR AFTER CONVICTION.

Section 1573. Insane person cannot be tried, or punished.
" *1574. Doubts as to sanity of the defendant, how determined. Stay of proceedings on.*
" *1575. Trial of the question of insanity. Charge of court.*
" *1576. Verdict of the jury as to sanity, and proceedings thereon.*
" *1577. If defendant is committed, it exonerates his bail, etc.*
" *1578. Defendant detained in asylum until he becomes sane.*
" *1579. Expense of sending, etc., defendant to asylum.*

SEC. 1573. A person cannot be tried, adjudged to punishment or punished for a public offense, while he is insane.

SEC. 1574. When an action is called for trial, or at any time during the trial, or when the defendant is brought up for judgment on conviction, if a doubt arises as to the sanity of the defendant, the court must order the question as to his sanity to be submitted to a jury; and the trial or the pronouncing of the judgment must be suspended until the question is determined by their verdict, and the trial jury may be discharged or retained, according to the discretion of the court, during the pendency of the issue of insanity.

SEC. 1575. The trial of the question of insanity must proceed in the following order:

1. The counsel for the defendant must open the case, and offer evidence in support of the allegation of insanity.

2. The counsel for the State may then open their case, and offer evidence in support thereof.

3. The parties then may respectively offer rebutting testimony only, unless the court, for good reason, in furtherance of justice, permit them to offer evidence upon their original cause.

4. When the evidence is concluded, unless the case is submitted to the jury on either or both sides without argument, the counsel for the State must commence, and the defendant or his counsel may conclude the argument to the jury.

5. If the indictment or information be for an offense punish-

able with death, two counsel on each side may argue the cause to the jury, in which case they must do so alternately. In other cases, the argument may be restricted to one counsel on each side.

6. The court must then charge the jury, stating to them all matters of law necessary for their information in giving their verdict.

SEC. 1576. If the jury find the defendant sane, the trial must proceed, or judgment be pronounced, as the case may be. If the jury find the defendant insane, the trial or judgment must be suspended until he becomes sane, and the court must order that he be in the meantime committed by the sheriff to the State insane asylum, and that upon his becoming sane he be re-delivered to the sheriff.

SEC. 1577. The commitment of the defendant, as mentioned in the last section, exonerates his bail, or entitles a person, authorized to receive the property of the defendant, to a return of any money he may have deposited instead of bail.

SEC. 1578. If the defendant is received in to the asylum he must be detained there until he becomes sane. When he becomes sane, the superintendent must give notice of that fact to the sheriff and county attorney of the county. The sheriff must thereupon, without delay, bring the defendant from the asylum, and place him in proper custody until he is brought to trial or judgment, as the case may be, or is legally discharged. The sheriff must receive the actual expenses incurred and no more.

SEC. 1579. The expenses of sending the defendant to the asylum, of keeping him there, and of bringing him back, are in the first instance chargeable to the county in which the indictment was found, or the information filed; but the county may recover them from the estate of the defendant, if he have any, or from a relative, town, city, or county bound to provide for and maintain him elsewhere.

CHAPTER VII.

COMPROMISING CERTAIN PUBLIC OFFENSE BY LEAVE OF THE COURT.

Section 1581. Compromise of offense for which civil action may be had.

" 1582. Compromise by permission of the court bars another prosecution.

" 1583. No public offense to be compromised except.

SEC. 1581. When a defendant is held to answer on a charge of misdemeanor, for which the person injured by the act constituting the offense has a remedy by civil action, the offense may be compromised as provided in the next section, except when it is committed:

1. By or upon an officer of justice, while in the execution of the duties of his office.

2. Riotously.

3. With an intent to commit a felony.

SEC. 1582. If the party injured appears before the court in which the trial is to be had, at any time before trial, and acknowledges that he has received satisfaction for the injury, the court may, in its discretion, on payment of costs incurred, order all proceedings to be stayed upon the prosecution, and the defendant to be discharged therefrom; but in such case the reasons for the order must be set forth therein, and entered on the minutes. The order is a bar to another prosecution for the same offense.

SEC. 1583. No public offense can be compromised, nor can any proceeding or prosecution for the punishment thereof upon a compromise be stayed, except as provided in this chapter.

CHAPTER VIII.

DISMISSAL OF THE ACTION BEFORE OR AFTER INFORMATION OR AFTER INDICTMENT FOR WANT OF PROSECUTION OR OTHERWISE.

Section 1587. When action may be dismissed.
" 1588. Case may be continued.
" 1589. Continuance and discharge from custody.
" 1590. If action dismissed, defendant to be discharged, etc.
" 1591. Dismissed on motion of court or application of county attorney.
" 1592. Nolle prosequi abolished.
" 1593. Dismissal a bar in misdemeanor, but not in felony.

SEC. 1587. The court, unless good cause to the contrary is shown, must order the prosecution to be dismissed in the following cases:

1. Where a person has been held to answer for a public offense, if an information is not filed against him, within thirty days thereafter.

2. If a defendant, whose trial has not been postponed upon his application, is not brought to trial within six months after the finding of the indictment, or filing of the information.

SEC. 1588. If, when application is made for the discharge of a defendant, under either subdivision of the next preceding section, the court is satisfied that there is material evidence on the part of the State, which cannot then be had; that reasonable exertions have been made to procure the same, and that there is just ground to believe that such evidence can be had at the succeeding term or session, or to such a reasonable time as may seem proper, the cause may be continued to the next term or session.

SEC. 1589. If the defendant is not brought to trial as provided in this chapter, and sufficient reason therefor is shown, the court may order the action to be continued from time to time, and in the meantime may discharge the defendant from custody on his own undertaking of bail for his appearance to answer the charge at the time to which the action is continued.

SEC. 1590. If the court directs the action to be dismissed, the defendant must, if in custody, be discharged therefrom; or, if admitted to bail, his bail exonerated, or money deposited instead of bail must be refunded to him.

SEC. 1591. The court may, either of its own motion or upon the application of the county attorney, and in furtherance of justice, order an action, information, or indictment to be dismissed. The reasons of the dismissal must be set forth in an order entered upon the minutes.

SEC. 1592. The entry of a nolle prosequi is abolished, and neither the Attorney-General nor the county attorney can discontinue or abandon a prosecution for a public offense, except as provided in the last section.

SEC. 1593. An order for the dismissal of an action, as provided in this chapter, is a bar to any other prosecution for the same offense, if it is a misdemeanor, but it is not a bar if the offense is a felony.

CHAPTER IX.

PROCEEDINGS AGAINST CORPORATIONS.

Section 1597. Summons upon information against corporation.
" *1598. Form of summons.*
" *1599. When and how served.*
" *1600. Examination of the charge.*
" *1601. Certificate of magistrate and return.*
" *1602. Grand jury to investigate if there is sufficient cause.*
" *1603. Appearance and plea.*
" *1604. Fine on conviction, how collected.*
" *1665. Summons to corporation.*
" *1606. Service of summons.*

SEC. 1597. Upon a complaint against a corporation, the magistrate must issue a summons signed by him, with his name of office, requiring the corporation to appear before him, at a specified time and place, to answer the charge, the time to be not less than ten days after the issuing of the summons.

SEC. 1598. The summons must be substantially in the following form:
"County of (as case may be).
"The State of Montana to the (naming the corporation):

"You are hereby summoned to appear before me at (naming the place), on (specifying the day and hour), to answer a charge made against you upon the complaint of A. B. for (designating the offense generally).

"Dated at the city (or township) of———, this———day of———, eighteen———.

"G. H., Justice of the Peace (or as the case may be)."

SEC. 1599. The summons must be served at least five days before the day of appearance fixed therein, by delivering a copy thereof and showing the original to the president or other head of the corporation, or to the secretary, cashier, or managing agent thereof.

SEC. 1600. At the appointed time in the summons, the magistrate must proceed to investigate the charge in the same manner as in the case of a natural person, so far as these proceedings are applicable.

SEC. 1601. After hearing the proofs, the magistrate must certify upon the complaint, either that there is or is not sufficient cause to believe the corporation guilty of the offense charged, and must return the complaint and certificate, as prescribed in Section 1048.

SEC. 1602. If the magistrate returns a certificate that there is sufficient cause to believe the corporation guilty of the offense charged, the county attorney may file an information thereof, as in case of a natural person held to answer, or he may file such information by leave of the court.

SEC. 1603. If an indictment is found, or information is filed, the corporation may appear by counsel to answer the same. If it does not thus appear, a plea of not guilty must be entered, and the same proceedings had thereon as in other cases.

SEC. 1604. When a fine is imposed upon a corporation on conviction, it may be collected by virtue of the order imposing it, by the sheriff of the county, out of its real and personal property, in the same manner as upon an execution in a civil action.

SEC. 1605. When an indictment is found or an information filed against a corporation, the clerk must issue a summons in its corporate name, commanding it to appear and answer the indictment or information, a copy of which summons must be served on an officer of said corporation, or upon its agent or attorney designated as the person upon whom service of summons in civil actions may be made, if there be any such in the county where the indictment is found or information is filed; and if there be no officer or designated agent or attorney in the county where the indictment or information is found or filed, then upon any managing agent, ticket agent, clerk, cashier, or secretary, freight agent, superintendent, or general business manager in the county; and if there be none of the above described persons in the county, then upon any of such persons in any county in the State. Such notice must be served at least five days before the time at which the said corporation is by summons required to appear.

SEC. 1606. When the sheriff or other officer returns the summons, certifying the service thereof, the corporation must on and after the day appointed in such summons for its appearance, be considered in default, and the court must order the clerk to enter appearance for the corporation, and enter the plea of not guilty in the records of the court, and further proceedings may be had thereon as if the corporation had appeared and pleaded not guilty thereto; and if the corporation is convicted, the court must enter judgment for the amount of the fine and costs which may be awarded against it, in the same manner as on judgment in civil action.

CHAPTER X.

ENTITLING AFFIDAVITS.

Section 1608. Affidavits defectively entitled, valid.

SEC. 1608. It is not necessary to entitle an affidavit or deposition in the action, whether taken before or after information, or after indictment, or upon an appeal; but if made without a title, or with an erroneous title, it is as valid and effectual for every purpose as if it were duly entitled, if it intelligibly refer to the proceeding, indictment, information, or appeal in which it is made.

CHAPTER XI.

ERRORS AND MISTAKES IN PLEADINGS AND OTHER PROCEEDINGS.

Section 1609. When not material.

SEC. 1609. Neither a departure from the form or mode prescribed by this Code in respect to any pleading or proceeding, nor an error or mistake therein, renders it invalid, unless it has actually prejudiced the defendant, or tended to his prejudice, in respect to a substantial right.

CHAPTER XII.

DISPOSAL OF PROPERTY STOLEN OR EMBEZZLED.

Section 1610. Peace officer must hold property subject to order of magistrate.
" *1611. Order for its delivery to owner.*

Section 1612. Magistrate must deliver it to owner.
" 1613. Court in which trial is had may order its delivery.
" 1614. Delivered to county treasurer if not claimed in six months.
" 1615. Receipt for money, etc., taken from person arrested.
" 1616. Record of property alleged to be stolen.

SEC. 1610. When property, alleged to have been stolen or embezzled, comes into the custody of a peace officer, he must hold it subject to the order of the magistrate authorized by the next section to direct the disposal thereof.

SEC. 1611. On satisfactory proof, of the ownership of the property, the magistrate before whom the information is laid, or who examines the charge against the person accused of stealing or embezzling it, must order it to be delivered to the owner, on his paying the necessary expenses incurred in its preservation, to be certified by the magistrate. The order entitles the owner to demand and receive the property.

SEC. 1612. If property stolen or embezzled comes into custody of the magistrate, it must be delivered to the owner on satisfactory proof of his title, and on his paying the necessary expenses incurred in its preservation, to be certified by the magistrate.

SEC. 1613. If the property stolen or embezzled has not been delivered to the owner, the court before which a trial is had for stealing or embezzling it may, on proof of his title, order it to be restored to the owner.

SEC. 1614. If the property stolen or embezzled is not claimed by the owner before the expiration of six months from the conviction of a person for stealing or embezzling it, the magistrate or officer having it in custody must, on the payment of the necessary expenses incurred in its preservation, deliver it to the county treasurer, by whom it must be sold and the proceeds paid into the county treasury.

SEC. 1615. When money or other property is taken from a defendant, arrested upon a charge of a public offense, the officer taking it must at the time give duplicate receipts therefor, specifying particularly the amount of money or the kind of property taken; one of which receipts he must deliver to the defendant and the other of which he must forthwith file with the clerk of the court to which the complaint and statement are to be sent. When such property is taken by a police officer of any incorporated city or town, he must deliver one of the receipts to the defendant, and one, with the property, at once to the clerk or other person in charge of the police office in such city or town.

SEC. 1616. The clerk in, or person having charge of, the police office in any incorporated city or town, must enter in a suitable book a description of every article of property alleged to be stolen or embezzled, and brought into the office or taken from the person of a prisoner, and must attach a number to each article, and make a corresponding entry thereof.

CHAPTER XIII.

PARDONS, COMMUTATIONS, REMISSIONS AND RESPITES.

Section 1620. Power of Governor to grant pardons, Board of Pardons, how composed.
“ *1621. Meetings of the Board.*
“ *1622. Notice of pardon from the Governor, Board to convene.*
“ *1623. Order of the Board fixing time for hearing, form of order.*
“ *1624. Publication of order.*
“ *1625. Proof of publication.*
“ *1626. Record of meeting. what to contain.*
“ *1627. Counsel may be heard.*
“ *1628. Decision and papers to be transmitted to surety of State.*
“ *1629. Decision and dissent to be recorded.*
“ *1630. Board to keep a record, what to contain.*
“ *1631. Board may prescribe rules.*
“ *1632. Governor to report to legislative assembly.*
“ *1633. Governor may require report from judge.*
“ *1634. When publication not necessary.*
“ *1635. Governor may respite.*
“ *1636. May restore to citizenship.*

SEC. 1620. The Governor has the power to grant pardons, absolute or conditional, and to remit fines and forfeitures, and to grant commutation of punishments and respites after conviction, and judgment for offenses committed against the criminal laws of this State. Provided, however, that before granting pardons, remitting fines and forfeitures, or commuting punishments, the action of the Governor concerning the same shall be approved by a Board, or a majority thereof, composed of the Secretary of State, Attorney General, and State Auditor, who shall be known as the "Board of Pardons," of which the Governor is president, and the Secretary of State is secretary.

SEC. 1621. The Board must hold regular meetings at its office at the seat of government, on the second Monday of each month, and such special meetings as the president, or any two members, may direct.

SEC. 1622. Upon the receipt of a notice in writing from the Governor that he has granted a pardon, absolute or conditional, or remitted a fine or forfeiture, or commuted a punishment of any person after conviction and judgment for any offense committed against the criminal laws of this State, the Board must immediately convene for the consideration thereof.

SEC. 1623. At such meeting the Board must pass an order in substance as follows:

"Whereas, The Governor has this day officially notified the Board that he has granted a ——— pardon (commutation of punishment or remitted a fine or forfeiture as the case may be), to one ————, a convict confined in the State prison (or to one ————, who has been found guilty of an offense committed against the laws of the State) who was convicted of the crime of ———— committed at ————, in the County of ———, State of Montana, on the —— day of ——, 18—, and sentenced for a term of ——— years.

Therefore, be it ordered that ——— the ——— day of ————, 18—, be set apart for the consideration of said (pardon, remission of fine or forfeiture, or commutation of punishment as the case may be) so granted (or commuted) as aforesaid; and all persons having an interest therein desiring to be heard either for or against the granting of the pardon (or commutation, remission of the fine or forfeiture) are hereby notified to be present at ——, noon of said day, at the office of the Board of Pardons at the seat of government.

Further ordered that a copy of this order be printed and published in the ——— (here insert name of some newspaper of general circulation in the county where the crime was committed) ——— a daily (or weekly) newspaper printed and published at ——— in the County of ———, once each week for two weeks, beginning ——— 18—, and ending ———."

SEC. 1624. The Board must cause a copy of such order to be published in the newspaper therein designated, at least once a week for two weeks prior to the hearing, and at the same time cause to be deposited in the postoffice at the seat of government, postpaid, a copy of said order and notice addressed to the district judge, county attorney and sheriff, respectively, of the county where the crime was committed, and in like manner mail a copy of the order to the petitioner and the convict.

SEC. 1625. Prior to the time set for hearing, proof of the publication of notice must be made by the publisher or managing agent.

SEC. 1626. At the hearing the Board must cause to be kept a record showing:

1. The name of all persons appearing before the Board on behalf of the person pardoned by the Governor.

2. The name of all persons appearing before the Board in opposition to the granting of the same.

3. The testimony of all persons giving evidence before the Board.

4. That the affidavit and return from the printer of the pub-

lication of the notice and order of hearing, was on file prior to the hearing.

SEC. 1627. The petitioner, as well as parties opposed to granting the relief sought, may, in the discretion of the Board, be heard by counsel.

SEC. 1628. Within twenty days after the hearing of any case, the Board must file with the Secretary of the State, its decision in writing, together with all papers used in each case, and transmit a copy of the decision to the Governor.

SEC. 1629. The decison must be entered at length in the "Record of Proceedings" of the Board, and the dissent of any member thereto must be filed and entered at the same time.

SEC. 1630. The Board must keep a record of its proceedings, in which must appear a copy of all notices of the granting of pardons, absolute or conditional, the remission of fines or forfeiture, the commutation of punishment transmitted by the Governor, with a list of the signatures and recommendations in favor of each applicant; also stating therein—

1. The name of the convict.
2. The crime of which he was convicted.
3. The term of sentence and its date.
4. The date of commutation, pardon or remission.

SEC. 1631. The Board may prescribe such rules and regulations for the discharge of its duties, not inconsistent with the provisions of law as it may deem necessary.

SEC. 1632. The Governor must communicate to the Legislative Assembly at each regular session, each case of remission of fine or forfeiture, reprieve, commutation or pardon, granted since the last previous report, stating the name of the convict, the crime of which he was convicted, the sentence and its date, the date of remission, commutation, pardon or reprieve, with the reason for granting the same, and the objection, if any, of any of the members of the Board made thereto.

SEC. 1633. When an application is made to the Governor for a pardon, he may require the judge of the court before which the conviction was had, or the county attorney by whom the action was prosecuted, to furnish him, without delay, with a statement of the facts on the trial, and any other facts having reference to the propriety of granting or refusing the pardon.

SEC. 1634. No publication need be made as provided in Section 1623, in the following cases:

1. When there is imminent danger of the death of the person convicted or imprisoned.
2. When the term of imprisonment of the applicant is within ten days of its expiration.

SEC. 1635. The Governor has the power to grant respites after conviction and judgment, for any offenses committed against the criminal laws of the State, for such time as he thinks proper.

SEC. 1636. The Governor has power to restore to citizenship any person convicted of any offense committed against the laws of the State, upon cause being shown, either after the expiration of sentence, or after pardon.

CHAPTER XIV.

PROCEEDINGS IN BASTARDY.

Section 1639. Complaint in bastardy, what to contain, how entitled.
" *1640. Clerk to give notice, how and to whom.*
" *1641. Lien upon real property, how created and for what.*
" *1642. Judge may order attachment without bond when.*
" *1643. County attorney required to prosecute.*
" *1644. Issue on the trial shall be "guilty" or "not guilty."*
" *1645. Judgment and liability where accused found guilty.*
" *1646. Power of court over judgments and orders.*

SEC. 1639. When any woman residing in any county of the State is delivered of a bastard child, or is pregnant with a child which, if born alive, will be a bastard, complaint may be made in writing by any person to the district court of the county where she resides, stating that fact, and charging the proper person with being the father thereof. The proceeding must be entitled in the name of the State against the accused as defendant.

SEC. 1640. Upon the filing of the complaint, duly verified, the clerk must cause notice to be given to the person so charged, as in an ordinary action.

SEC. 1641. From the time of the filing of such complaint, a lien is created upon the real property of the accused in the county where the action is pending, for the payment of any money and the performance of any order adjudged by the proper court; but no lien attaches until notice of the pendency of the action is filed in the county clerk's office of the county where the real property is situated.

SEC. 1642. The district judge may order an attachment to issue thereon without an undertaking, which order must specify the amount of property to be seized under the attachment, and may be revoked at any time by such judge or the court, on a showing made to either for a revocation of the same, and on such terms as such court or judge may deem proper in the premises.

SEC. 1643. The county attorney, on being notified of the facts, must prosecute the matter in behalf of the complainant.

SEC. 1644. The issue on the trial is "guilty," or "not guilty," and must be tried as an ordinary action.

SEC. 1645. If the accused is found guilty, he must be charged with the maintainance of the child, in such sum, and in such manner as the court directs, with the costs of suit; and the clerk may issue execution for any sum ordered, to be paid immediately, and afterwards, from time to time, as may be required to compel compliance with the order of the court, and the defendant may be committed to the county jail until he complies with the order or judgment.

SEC. 1646. The court may, at any time enlarge, diminish, or vacate any order or judgment rendered in the proceedings, on such notice to the defendant as the court or judge may prescribe.

TITLE XI.

PROCEEDINGS IN JUSTICES' AND POLICE COURTS AND APPEALS TO DISTRICT COURTS.

CHAPTER I.

PROCEEDINGS IN JUSTICES' AND POLICE COURTS.

Section 1650. Proceedings must be by complaint.
“ *1651. When warrant of arrest must issue. Form.*
“ *1652. Minutes, how kept.*
“ *1653. Plea, how put in.*
“ *1654. Issue, how tried.*
“ *1655. Change of venue, when granted.*
“ *1656. Papers and proceedings to be transferred.*
“ *1657. True name of defendant.*
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“ *1660. Jury.*
“ *1661. Jury trial, how waived.*
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“ *1667. Trial, how conducted.*
“ *1668. Court decides questions of law.*
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“ *1670. Verdict, how delivered and entered.*
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“ *1674. Proceedings on plea of guilty.*
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Section 1676. Justice may modify same.
" *1677. Fine or imprisonment.*
" *1678. Defendant on acquittal to be discharged.*
" *1679. Prosecutor to pay costs.*
" *1680. Judgment.*
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" *1687. Trial anew.*
" *1688. Defendant must be discharged on acquittal.*
" *1689. Judgment of imprisonment, how executed.*
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" *1691. Subpoena.*
" *1692. Entitling affidavits.*
" *1693. Police courts defined.*
" *1694. Officer must pay fines to justice.*
" *1695. Justice must pay fines to treasurer.*

SEC. 1650. All proceedings and actions before a justice's or police court, for a public offense of which such courts have jurisdiction, must be commenced by complaint under oath, setting forth the offense charged, with such particulars of time, place, person, and property, as to enable the defendant to understand distinctly the character of the offense complained of, and to answer the complaint. A city or town ordinance may be referred to by its title and section, and the number thereof.

SEC. 1651. If the justice of the peace, or police judge, is satisfied therefrom that the offense complained of has been committed, he must issue a warrant of arrest which must be substantially in the following form:

"County of———;

"The State of Montana to any sheriff, constable, marshal or policeman in this State:

"Complaint upon oath having been this day made before me ———, (justice of the peace or police judge, as the case may be) by C. D., that the offense of (designating it generally) has been committed, and accusing E. F. thereof; you are hereby commanded forthwith to arrest the above named E. F. and bring him before me forthwith, at (naming the place).

"Witness my hand and seal at ———, this ——— day of ———, A. D. ——. "A. B," Justice of the Peace or Judge.

SEC. 1652. A docket must be kept by the justice of the peace, or police judge, in which must be entered each action, and the proceedings of the court therein.

SEC. 1653. The defendant may make the same plea as upon indictment or information. His plea must be oral, and entered in the minutes. If the defendant plead guilty, the court may, before entering such plea or pronouncing judgment, examine witnesses to ascertain the gravity of the offense committed; and if it appear to the court that a higher offense has been committed than the offense charged in the complaint, the court may order the defendant to be committed or admitted to bail, to answer any information which may be filed by the county attorney.

SEC. 1654. Upon a plea other than guilty, if the parties waive a trial by jury, and an adjournment or change of place of trial is not granted, the court must proceed to try the case.

SEC. 1655. If the action or proceeding is in a justice's court, a change of the place of trial may be had at any time before the trial commences—

1. When it appears from the affidavit of the defendant that he has good reason to believe, and does believe, that he can not have a fair and impartial trial before the justice about to try the case, by reason of the prejudice or bias of such justice, the cause must be transferred to another justice of the same or adjoining township.

2. When it appears from affidavit that the defendant can not have a fair and impartial trial, by reason of the prejudice of the citizens of the township, the cause must be transferred to a justice of the township where the same prejudice does not exist. In each case the defendant must state the facts upon which his belief is founded.

SEC. 1656. When a change of the place of trial is ordered, the justice must transmit to the justice before whom the trial is to be had all the original papers in the cause, with a certified copy of the minutes of his proceedings; and upon receipt thereof, the justice to whom they are delivered must proceed with the trial in the same manner as if the proceeding or action had been orignally commenced in his court.

SEC. 1657. The defendant, if he declare that the name given him in the complaint is not his true name, must make known what his name is, and if he fail to do so, he shall not afterward be allowed to raise the objection that he was not complained of under his true name.

SEC. 1658. If he give his true name, the court must make a minute of the same, and thereafter the case must proceed in that name.

SEC. 1659. If a demurrer to any complaint is sustained for any other cause than that of a want of jurisdiction in the court to hear the offense charged, a new complaint may be made against the defendant.

SEC. 1660. The defendant is entitled to a jury of six qualified persons, but may consent to a less number.

SEC. 1661. A trial by jury may be waived by the consent of both parties expressed in open court and entered in the docket. The formation of the jury is provided for in Chapter I., Title III., Part One of the Code of Civil Procedure.

SEC. 1662. Before the commencement of a trial in any of the courts mentioned in this chapter, either party may, upon good cause shown, have a reasonable postponement thereof.

SEC. 1663. When a trial under the provisions of this chapter is continued by the court, it is not necessary for the court to summon any witnesses who may be present at the continuance, but the court must verbally notify such witnesses, as either party may require, to attend before it, to testify in the cause, on the day set for trial, which verbal notice is as valid as a subpoena.

SEC. 1664. The defendant must be personally present before the trial can proceed.

SEC. 1665. The same challenges may be taken by either party to the panel of jurors, or to any individual juror, as on the trial of an indictment or information, for a misdemeanor; but the challenge must in all cases be tried by the court.

SEC. 1666. The court must administer to the jury the following oath: "You do swear that you will well and truly try this issue between the State of Montana and A. B., the defendant, and a true verdict render according to the evidence."

SEC. 1667. After the jury are sworn, they must sit together and hear the proofs and allegations of the parties, which must be delivered in public, and in the presence of the defendant. The jury must not separate during the trial except by consent of the parties.

SEC. 1668. The court must decide all questions of law which may arise in the course of the trial, but can give no charge with respect to matters of fact.

SEC. 1669. After hearing the proofs and allegations, the jury may decide in court, or may retire for consideration. If they do not immediately agree, an officer must be sworn to the following effect: "You do swear that you will keep this jury together in some quiet and convenient place; that you will not permit any person to speak to them, nor to speak to them yourself, unless by order of the court, or to ask them whether they have agreed upon a verdict; and that you will return them into court when they have so agreed, or when ordered by the court."

SEC. 1670. The verdict of the jury must in all cases be general. When the jury have agreed on their verdict, they must deliver it publicly to the court, who must enter, or cause it to be entered, in the minutes.

SEC. 1671. When several defendants are tried together, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment must be entered accordingly, and the case as to the rest may be tried by another jury.

SEC. 1672. The jury cannot be discharged after the cause is submitted to them, until they have agreed upon and rendered their verdict, unless for good cause the court sooner discharges them.

SEC. 1673. If the jury is discharged, as provided in the last section, the court may proceed again to the trial, in the same manner as upon the first trial, and so on, until a verdict is rendered.

SEC. 1674. When the defendant pleads guilty, or is convicted, either by the court or by a jury, the court must render judgment thereon of fine or imprisonment, or both, as the case may be. The judgment must be executed by the sheriff, constable, marshal or policeman of the jurisdiction in which the conviction was had.

SEC. 1675. When the punishment provided for any offense is in the alternative, the jury may fix the same; any neglect on their part to do so will not prevent the court from fixing it.

SEC. 1676. If the justice deem any penalty fixed by the jury erroneous, he has the right to modify the same.

SEC. 1677. A judgment that the defendant pay a fine, may also direct that he be imprisoned until the fine be satisfied, in the proportion of one day's imprisonment for every two dollars of the fine.

SEC. 1678. When the defendant is acquitted, either by the court or by the jury, he must be immediately discharged; and if the court certify in the minutes that the prosecution was malicious or without probable cause, it may order the prosecutor to pay the costs of the action, or to give satisfactory security by a written undertaking, with one or more sureties, to pay the same within thirty days after the trial.

SEC. 1679. If the prosecutor does not pay the costs, or give security therefor, the court may enter judgment against him for the amount thereof, which may be enforced in all respects in the same manner as a judgment rendered in a civil action. An appeal may be taken as in other cases in a civil action.

SEC. 1680. After a plea or verdict of guilty, or after a verdict against the defendant, on a plea of a former conviction or acquittal, the court must appoint a time for rendering judgment, which must not be more than two days nor less than six hours after the verdict is rendered, unless the defendant waive the postponement. If postponed, the court may hold the defendant to bail to appear for judgment. A judgment must be entered in the minutes of the court as soon as rendered.

SEC. 1681. A defendant committed under the provisions of this chapter may be discharged in the same manner as if he had been committed by the District Court.

SEC. 1682. The defendant may appeal to the District Court at any time within ten days after judgment is rendered.

SEC. 1683. An appeal is taken by the defendant by giving notice in open court of his intention so to do, at the time of the rendition of the verdict or judgment, or by filing with the justice within five days thereafter, a written notice of appeal.

SEC. 1684. When the appeal is from a judgment for fine, the defendant must within ten days after the rendition of the verdict or judgment, file with the justice an undertaking, with two sufficient sureties, in double the amount of the judgment for fine and costs, to the effect that defendant will pay the same or such part thereof as the District Court may direct, or if the appeal is dismissed, that judgment may be entered against said sureties, in the District Court therefor, such undertaking must be approved by the justice and the sureties must justify as provided in this Code.

SEC. 1685. If on appeal judgment is rendered against the defendant, or if the appeal is dismissed, the court must also render a judgment against the sureties for the amount of fine and costs.

SEC. 1686. When the appeal is from a judgment of imprisonment the defendant may be admitted to bail pending the appeal by giving an undertaking as provided in Subdivision 2, Section 1475, in a sum, to be approved by the court, not exceeding seven hundred dollars, to the effect that defendant will appear and surrender himself in execution of any judgment in said District Court that may be rendered therein against him, and obey all orders of the District Court, and pay all costs that may be awarded against defendant, or if said appeal be dismissed.

SEC. 1687. All cases on appeal from justices, or police courts must be tried anew in the District Court.

SEC. 1688. If judgment of acquittal is given, or judgment imposing a fine only, without imprisonment for non-payment, and the defendant is not detained for any other legal cause, he must be discharged as soon as the judgment is given.

SEC. 1689. When a judgment of imprisonment is entered, a certified copy thereof must be delivered to the sheriff or other officer, which is a sufficient warrant for its execution. When a judgment is entered imposing a fine, or ordering the defendant to be imprisoned until the fine is paid, he must be held in custody during the time specified in the judgment, unless the fine is sooner paid.

SEC. 1690. The defendant, at any time after his arrest, and before conviction, may be admitted to bail. The provisions of this Code relative to bail are applicable to bail in justices' or police courts.

SEC. 1691. The justice or judge of either of the courts mentioned in this chapter may issue subpoenas for witnesses, as provided in Section 1533, and punish disobedience thereof, as provided in Section 1538.

SEC. 1692. The provisions of Section 1608 in respect to entitling affidavits, are applicable to proceedings in the courts mentioned in this chapter.

SEC. 1693. The term "Police Court,"as used in this chapter, includes police magistrates and police courts.

SEC. 1694. Any officer charged with the collections of fines under the provisions of this chapter, must return the execution to the justice, within thirty days from its delivery to him, and pay over to the justice the money collected therefrom, deducting his fees for the collection.

SEC. 1695. All fines imposed and collected by any court, under the provisions of this chapter, must be paid by him to the treasurer of the county, city, or town, according as the offense is prosecuted in a justice or police court, within thirty days after the receipt of the same, and the justice or police judge must take duplicate receipts therefor, one of which he must deposit with the county, city, or town clerk, as the case may be.

TITLE XII.

SPECIAL PROCEEDINGS OF A CRIMINAL NATURE.

Chapter I. The writ of habeas corpus.
" II. Coroner's inquests and duties of coroners.
" III. Search warrants.
" IV. Proceedings against fugitives from justice.
" V. Miscellaneous provisions respecting special proceedings of a criminal nature.

CHAPTER I.

THE WRIT OF HABEAS CORPUS.

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" 1702. By whom issued, and before whom returnable.
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SEC. 1700. Every person unlawfully imprisoned or restrained of his liberty, under any pretense whatever, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment or restraint.

SEC. 1701. Application for the writ is made by petition, signed either by the party for whose relief it is intended, or by some person in his behalf, and must specify:

1. That the person in whose behalf the writ is applied for is imprisoned or restrained of his liberty, the officer or person by whom he is so confined or restrained, and the place where, naming all the parties, if they are known, or describing them, if they are not known.

2. If the imprisonment is alleged to be illegal, the petition must also state in what the alleged illegality consists.

3. The petition must be verified by the oath or affirmation of the party making the application.

SEC. 1702. The writ of habeas corpus may be granted—

1. By the Supreme Court, or any justice thereof, upon petition by or on behalf of any person restrained of his liberty in this State. When so issued it may be made returnable before the court, or any justice thereof, or before any District Court, or judge thereof.

2. By the District Courts, or a judge thereof, upon petition by or on behalf of any person restrained of his liberty in their respective counties or districts.

SEC. 1703. Any court or judge authorized to grant the writ, to whom a petition therefor is presented, must, if it appear that the writ ought to issue, grant the same without delay.

SEC. 1704. The writ must be directed to the person having custody of or restraining the person on whose behalf the application is made, and must command him to have the body of such person before the court, or judge, before whom the writ is returnable, at a time and place therein specified.

SEC. 1705. If the writ is directed to the sheriff or other ministerial officer of the court out of which it issues, it must be delivered by the clerk to such officer without delay, as other writs are delivered for service. If it is directed to any other person it must be delivered to the sheriff, and be by him served upon such person by delivering the same to him without delay. If the person to whom the writ is directed cannot be found; or refuses admittance to the officer or person serving or delivering such writ, it may be served or delivered by leaving it at the residence of the person to whom it is directed, or by affixing it to some conspicuous place on the outside either of his dwelling house, or of the place where the party is confined or under restraint.

SEC. 1706. If the person to whom the writ is directed refuses, after service, to obey the same, the court or judge, upon affidavit must issue an attachment against such person, directed to the sheriff or coroner, commanding him forthwith to apprehend such person, and bring him immediately before such court or judge; and upon being so brought, he must be committed to the jail of the county until he makes due return to such writ, or is otherwise legally discharged.

SEC. 1707. The person upon whom the writ is served must state in his return, plainly and unequivocally:

1. Whether he has or has not the party in his custody or under his power or restraint.

2. If he has the party in his custody or power, or under his restraint, he must state the authority and cause of such imprisonment or restraint.

3. If the party is detained by virtue of any writ, warrant, or other written authority, a copy thereof must be annexed to the return and the original produced and exhibited to the court or judge on the hearing of such return.

4. If the person upon whom the writ is served had the party in his power or custody, or under his restraint, at any time prior or subsequent to the date of the writ of habeas corpus, but has transferred such custody or restraint to another, the return must state particularly to whom, at what time and place, for what cause, and by what authority, such transfer took place.

5. The return must be signed by the person making the same, and, except when such person is a sworn public officer, and makes such return in his official capacity, it must be verified by his oath.

SEC. 1708. The person to whom the writ is directed, if it is served, must bring the body of the party in his custody, or under his restraint, according to the command of the writ, except in the cases specified in the next section.

SEC. 1709. When, from sickness or infirmity of the person directed to be produced, he cannot, without danger, be brought before the court or judge, the person in whose custody or power he is may state that fact in his return to the writ, verifying the same by affidavit. If the court or judge is satisfied of the truth of such return, and the return to the writ is otherwise sufficient, the court or judge may proceed to decide on such return and to dispose of the matter as if such party had been produced on the writ, or the hearing thereof may be adjourned until such party can be produced.

SEC. 1710. The court or judge before whom the writ is returned must, immediately after the return, proceed to hear and examine the return, and such other matters as may be properly submitted to their hearing and consideration.

SEC. 1711. The party brought before the court or judge, on the return of the writ, may deny or controvert any of the material facts of matters set forth in the return, or except to the sufficiency thereof, or allege any fact to show either that his imprisonment or detention is unlawful, or that he is entitled to his discharge. The court or judge must thereupon proceed in a summary way to hear such proof as may be produced against such imprisonment or detention, or in favor of the same, and to dispose of such party as the justice of the case may require, and have full power and authority to require and compel the attendance of witnesses, by process of subpoena and attachment, and to do and perform all other acts and things necessary to a full and fair hearing and determination of the case.

SEC. 1712. If no legal cause is shown for such imprisonment or restraint, or for the continuation thereof, such court or judge must discharge such party from the custody or restraint under which he is held.

SEC. 1713. The court or judge, if the time during which such party may be legally detained in custody has not expired, must remand such party, if it appears that he is detained in custody—

1. By virtue of process issued by any court or judge of the United States, in a case where such court or judge has exclusive jurisdiction; or,

2. By virtue of the final judgment or decree of any competent court of criminal jurisdiction, or of any process issued upon such judgment or decree.

SEC. 1714. If it appears on the return of the writ that the prisoner is in custody by virtue of process from any court of this State, or judge or officer thereof, such prisoner may be discharged in any of the following cases, subject to the restriction of the last section—

1. When the jurisdiction of such court or officer has been exceeded.

2. When the imprisonment was at first lawful, yet by some act, omission, or event which has taken place afterwards, the party has become entitled to a discharge.

3. When the process is defective in some matter of substance required by law, rendering such process void.

4. When the process, though proper in form, has been issued in a case not allowed by law.

5. When the person having the custody of the prisoner is not the person allowed by law to detain him.

6. Where the process is not authorized by any order, judgment or decree of any court, nor by any provision of law.

7. Where a party has been committed on a criminal charge without reasonable or probable cause.

SEC. 1715. If any person is committed to prison or is in custody of any officer on a criminal charge, by virtue of any warrant of commitment of a justice of the peace, such person must not be discharged on the ground of any mere defect of form in the warrant of commitment.

SEC. 1716. If it appears to the court or judge, by affidavit or otherwise, or upon the inspection of the process or warrant of commitment, and such other papers in the proceedings as may be shown to the court or judge, that the party is guilty of a criminal offense, or ought not to be discharged, such court or judge, although the charge is defective or not substantially set forth in such process or warrant of commitment, must cause the complainant or other necessary witnesses to be subpoenaed to attend at such time as ordered, to testify before the court or judge; and upon the examination he may discharge such prisoner, let him to bail, if the offense be bailable, or recommit him to custody, as may be just and legal.

SEC. 1717. When a person is imprisoned or detained in custody on any criminal charge, for want of bail, such person is entitled to a writ of habeas corpus for the purpose of giving bail, upon averring that fact in his petition, without alleging that he is illegally confined.

SEC. 1718. Any judge before whom a person who has been committed on a criminal charge may be brought on a writ of habeas corpus, if the same is bailable, may take an undertaking of bail from such person as in other cases, and file the same in the proper court.

SEC. 1719. If a party brought before the court or judge on the return of the writ is not entitled to his discharge, and is not bailed, where such bail is allowable, the court or judge must remand him to custody or place him under the restraint from which he was taken, if the person under whose custody or restraint he was, is legally entitled thereto.

SEC. 1720. In cases where any party is held under illegal restraint or custody, or any other person is entitled to the restraint or custody of such party, the judge or court may order such party to be committed to the restraint or custody of such person as is by law entitled thereto.

SEC. 1721. Until judgment is given on the return, the court or judge before whom any party may be brought on such writ, may commit him to the custody of the sheriff of the county, or place him in such care or under such custody as his age or circumstances may require.

SEC. 1722. No writ of habeas corpus can be disobeyed for defect of form, if it sufficiently appear therefrom in whose custody or under whose restraint the party imprisoned or restrained is, the officer or person detaining him, and the court or judge before whom he is to be brought.

SEC. 1723. No person who has been discharged by the order of the court or judge upon habeas corpus can be again imprisoned, restrained, or kept in custody for the same cause, except in the following cases:

1. If he has been discharged from custody on a criminal charge, and is afterward committed for the same offense, by legal order or process.

2. If, after a discharge for defect of proof, or for any defect of the process, warrant, or commitment in a criminal case, the prisoner is again arrested on sufficient proof and committed by legal process for the same offense.

SEC. 1724. When it appears to any court or judge, authorized by law to issue the writ of habeas corpus, that any one is illegally held in custody, confinement, or restraint, and that there is reason to believe that such person will be carried out of the jurisdiction of the court or judge before whom the application is made, or will suffer some irreparable injury before compliance with the writ of habeas corpus can be enforced, such court or judge may cause a warrant to be issued, reciting the facts, and directed to the sheriff, coroner, or constable of the county, commanding such officer to take such person thus held in custody, confinement, or restraint, and forthwith bring him before such court or judge, to be dealt with according to law.

SEC. 1725. The court or judge may also insert in such warrant a command for the apprehension of the person charged with such illegal detention and restraint.

SEC. 1726. The officer to whom such warrant is delivered must execute it by bringing the person therein named before the court or judge who directed the issuing of such warrant.

SEC. 1727. The person alleged to have such party under illegal confinement or restraint may make return to such warrant, as in case of a writ of habeas corpus, and the same may be denied, and like allegations, proofs, and trial may thereupon be had as upon a return to a writ of habeas corpus.

SEC. 1728. If such party is held under illegal restraint or custody, he must be discharged, and if not, he must be restored to the care or custody of the person entitled thereto.

SEC. 1729. Any writ or process authorized by this chapter may be issued and served on any day or at any time.

SEC. 1730. All writs, warrants, process, and subpoenas, authorized by the provisions of this chapter, must be issued by the clerk of the court, and, except subpoenas, must be sealed with the seal of such court, and served and returned forwith, unless the court or judge shall specify a particular time for such return.

SEC. 1731. All such writs and process, when made returnable before a judge, must be returned before him at the county seat, and there heard and determined.

SEC. 1732. If any judge, after a proper application is made, refuses to grant an order for a writ of habeas corpus, or if the officer or person to whom such writ may be directed, refuses obedience to the command thereof, he shall forfeit and pay to the person aggrieved a sum not exeeeding five thousand dollars, to be recovered by action in any court of competent jurisdiction.

CHAPTER II.

CORONERS' INQUESTS AND DUTIES OF CORONERS.

Section 1737. Coroner to summon jury to inquire into cause of death.
" *1738. Jurors to be sworn.*
" *1739. Witnesses to be subpoenaed.*
" *1740. Witness compelled to attend.*
" *1741. Verdict of jury in writing. What to contain.*
" *1742. Testimony in writing, and where filed.*
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" *1744. Coroner to issue warrant, when.*
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" *1746. Warrant.*
" *1747. Same.*
" *1748. Form of warrant.*
" *1749. How served.*

SEC. 1737. When a coroner is informed that a person has been killed, or has committed suicide, or has died under such circumstances as to afford a reasonable ground to suspect that his death has been occasioned by the act of another by criminal means, he must go to the place where the body is, cause it to be exhumed if it has been interred, and summon not more than nine persons, qualified by law to serve as jurors, to appear before him, forthwith, at the place where the body of deceased is, to inquire into the cause of the death.

SEC. 1738. When six or more of the jurors attend, they must be sworn by the coroner to inquire who the person was, and when, where, and by what means he came to his death, and into the circumstances attending his death; and to render a true verdict thereon, according to the evidence offered them, or arising from the inspection of the body.

SEC. 1739. A coroner may issue subpoenas for witnesses, returnable forthwith; or at such time and place as he may appoint, which may be served by any competent person. He must summon and examine as witnesses every person who, in his opinion, or that of any of the jury, has any knowledge of the facts, and may summon a surgeon or physician to inspect the body, and give a professional opinion as to the cause of the death.

SEC. 1740. A witness served with a subpoena may be compelled to attend and testify, or punished by the coroner for disobedience in like manner as upon a subpoena issued by a justice of the peace.

SEC. 1741. After inspecting the body and hearing the testimony, the jury must render their verdict, and certify the same by an inquisition in writing, signed by them, and setting forth who the person killed is, and when, where, and by what means, he came to his death; and if he was killed, or his death occasioned by the act of another, by criminal means, who is guilty thereof.

SEC. 1742. The testimony of the witnesses examined before the coroner's jury must be reduced to writing by the coroner, or under his direction, and forthwith filed by him, with the inquisition, in the office of the clerk of the District Court of the county.

SEC. 1743. If, however, the person charged with the commission of the offense is arrested before the inquisition can be filed, the coroner must deliver the same, with the testimony taken, to the magistrate before whom such person may be brought, who must return the same, with the depositions and statement taken before him, to the office of the clerk of the District Court.

SEC. 1744. If the jury find that the person was killed by another, under circumstances not excusable or justifiable by law, or that his death was occasioned by the act of another by criminal means, and the party committing the act is ascertained by the inquisition, and is not in custody, the coroner must issue a warrant, signed by him, with his name of office, into one or more counties, as may be necessary for the arrest of the person charged.

SEC. 1745. If the inquisition find a crime has been committed on the deceased, and name the person whom the jury believes has committed it, the inquest shall not be made public until after the arrest, directed in the next section.

SEC. 1746. If the person charged be present, the coroner may order his arrest, by an officer or any person, and must make a warrant requiring the officer or other person to take him before the most accessible magistrate of the county.

SEC. 1747. If the person charged be not present, and the coroner believes he can be taken, the coroner may issue a warrant to the sheriff, or any constable of the county, requiring him to arrest the person and take him before a magistrate.

SEC. 1748. The coroner's warrant must be substantially in the following form:

"County of ———.

"The State of Montana to any sheriff, constable, marshal, or policeman in this State:

"An inquisition having been this day found by a coroner's jury before me, stating that A. B. has come to his death by the act of C. D., by criminal means, (or as the case may be, as found by the inquisition) you are therefore commanded forthwith to arrest the above named C. D., and take him before the nearest or most accessible magistrate in this county.

"Given under my hand this ——— day of ———, A. D. eighteen ———.

"E. F., Coroner of the county of ———."

SEC. 1749. The coroner's warrant may be served in any county, and the officer serving it must proceed thereon, in all respects as upon a warrant of arrest on an information before a magistrate, except that when served in another county it need not be indorsed by a magistrate of that county.

CHAPTER III.

SEARCH WARRANTS.

Section 1753. Search warrant defined.
" *1754. Upon what ground it may issue.*
" *1755. It cannot be issued but upon probable cause.*
" *1756. Magistrates must examine an oath, complainant, etc.*
" *1757. Depositions, what to contain.*
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" *1765. Officer to give receipt for property taken.*
" *1766. Property, how disposed of.*
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" *1768. If property perishable.*
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" *1772. Depositions, warrants, etc., to be returned by magistrate to district court.*
" *1773. Search of defendant in presence of magistrate.*

SEC. 1753. A search warrant is an order in writing, in the name of the State, signed by a magistrate, directed to a peace officer, commanding him to search for personal property, and bring it before the magistrate.

SEC. 1754. It may be issued upon either of the following grounds:

1. When the property was stolen or embezzled; in which case it may be taken on the warrant, from any place in which it is concealed, or from the possession of the person by whom it was stolen or embezzled, or from any person in whose possession it may be.

2. When it was used as the means of committing a felony; in which case it may be taken on the warrant from the place in which it is concealed, or from the possession of the person by whom it was used in the commission of the offense, or from any person in whose possession it may be.

3. When it is in the possession of any person with the intent to use it as the means of committing a public offense, or in the possession of another to whom he may have delivered it for the purpose of concealing it or preventing its being discovered; in which case it may be taken on the warrant from such person, or from any place occupied by him or under his control, or from the possession of the person to whom he may have so delivered it.

SEC. 1755. A search warrant cannot be issued but upon probable cause, supported by affidavit, naming or describing the person, and particularly describing the property and the place to be searched.

SEC. 1756. The magistrate must, before issuing the warrant, examine on oath the complainant, and any witnesses he may produce, and take their depositions in writing, and cause them to be subscribed by the parties making them.

SEC. 1757. The depositions must set forth the facts tending to establish the grounds of the application, or probable cause for believing that they exist.

SEC. 1758. If the magistrate is thereupon satisfied of the existence of the grounds of the application, or that there is probable cause to believe their existence, he must issue a search warrant, signed by him with his name of office, to a peace officer in his county, commanding him forthwith to search the person or place named, for the property specified, and to bring it before the magistrate.

SEC. 1759. The warrant must be in substantially the following form;

"County of———.

"The State of Montana to any sheriff, constable, marshal, or policeman, in the county of———:

"Proof, by affidavit, having been this day made before me, by (naming every person whose affidavit has been taken) that (stating the grounds of the application, according to Section

1755, or if the affidavit be not positive that there is probable cause for believing), that (stating the grounds of the application in the same manner), you are therefore commanded in the day-time (or at any time of the day or night, as the case may be, according to Section 1763) to make immediate search on the person of C. D., or in the house situated ———, (describing it or any other place to be searched, with reasonable particularity, as the case may be) for the following property, (describing it with reasonable particularity); and if you find the same or any part thereof, to bring it forthwith before me at (stating the place).

"Given under my hand, and dated this ———, day of ——, A. D. eighteen ———.

"E. F., Justice of the Peace" (or as the case may be).

Sec. 1760. A search warrant may in all cases be served by any of the officers mentioned in its directions, but by no other person, except in aid of the officer on his requiring it, he being present and acting in its execution.

Sec. 1761. The officer may break open any outer or inner door or window of a house, or any part of a house, or any thing therein, to execute the warrant, if, after notice of his authority and purpose, he is refused admittance.

Sec. 1762. He may break open any outer or inner door or window of a house, for the purpose of liberating a person who, having entered to aid him in the execution of the warrant, is detained therein, or when necessary for his own liberation.

Sec. 1763. The magistrate must insert a direction in the warrant that it be served in the day-time, unless the affidavits are positive that the property is on the person or in the place to be searched, in which case he may insert a direction that it be served at any time of the day or night.

Sec. 1764. A search warrant must be executed and returned to the magistrate who issued it within ten days after its date; after the expiration of this time the warrant, unless executed, is void.

Sec. 1765. When the officer takes the property under the warrant, he must give a receipt for the property taken (specifying it in detail) to the person from whom it was taken by him, or in whose possession it was found; or in the absence of any person, he must leave it in the place where he found the property.

Sec. 1766. When the property is delivered to the magistrate, he must, if it was stolen or embezzled, dispose of it as provided in Sections 1611 to 1616, inclusive. If it was taken on a warrant issued on the grounds stated in the second and third subdivisions of Section 1754, he must retain it in his possession, subject to the order of the court to which he is required to return the proceedings before him, or to any other court in which the offense, in respect to which the property taken, is triable.

SEC. 1768. If the property thus obtained be a living animal or be of a perishable nature, the court or magistrate authorized to order a restoration may order a sale thereof, and the proceeds shall be applied in the same manner as hereinbefore directed in respect to such property.

SEC. 1769. The officer must forthwith return the warrant to the magistrate, and deliver to him a written inventory of the property taken, made publicly or in the presence of the person from whose possession it was taken, and of the applicant for the warrant, if they are present, verified by the affidavit of the officer at the foot of the inventory, and taken before the magistrate at the time, to the following effect: "I, R. S., the officer by whom this warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant."

SEC. 1770. The magistrate must thereupon, if required, deliver a copy of the inventory to the person from whose possession the property was taken, and to the applicant for the warrant.

SEC. 1771. If the grounds upon which the warrant was issued be controverted, he must proceed to take testimony in relation thereto, and the testimony of each witness must be reduced to writing and authenticated in the same manner as prescribed in Section 1035.

SEC. 1772. If it appears that the property taken is not the same as that described in the warrant, or that there is no probable cause for believing the existence of the grounds on which the warrant was issued, the magistrate must cause it to be restored to the person from whom it was taken.

SEC. 1773. The magistrate must annex together the depositions, search warrant and return, and the inventory, and return them to the next term or session of the District Court having power to inquire into the offenses in respect to which the search warrant was issued, at or before its opening on the first day.

SEC. 1774. When a person charged with a felony is supposed by the magistrate before whom he is brought to have on his person a dangerous weapon, or anything which may be used as evidence of the commission of the offense, the magistrate may direct him to be searched in his presence, and the weapon or other thing to be retained, subject to his order, or to the order of the court in which the defendant may be tried.

CHAPTER IV.

PROCEEDINGS AGAINST FUGITIVES FROM JUSTICE.

Section 1780. Rewards for the apprehension of fugitives from justice.
" *1781. Standing reward.*

Section 1782. *Payment of reward.*
" 1783. *Fugitives from another State, when to be delivered up.*
" 1784. *Magistrate to issue warrant.*
" 1785. *Proceedings for the arrest and commitment of the person charged.*
" 1786. *When and for what time to be committed.*
" 1787. *His admission to bail.*
" 1788. *Magistrate must notify county attorney of the arrest.*
" 1789. *Duty of the county attorney.*
" 1790. *Person arrested when to be discharged.*
" 1791. *Magistrate to return his proceedings to district court.*
" 1792. *Fugitives from this State—Accounts.*
" 1793. *No fee to be paid to public officer procuring surrender.*

SEC. 1780. The Governor may offer a reward not exceeding one thousand dollars, payable out of the general fund, for the apprehension—

1. Of any convict who has escaped from the State prison; or,
2. Of any person who has committed, or is charged with the commission of a felony.

SEC. 1781. The Governor must offer a standing reward of three hundred dollars for the arrest of any person engaged in the robbery of, or in an attempt to rob, any person or persons upon, or having in charge, in whole or in part, any stage coach, wagon, railroad train, or other conveyance, engaged at the time in carrying passengers; or any private conveyance within this State, the reward to be paid to the person making the arrest, immediately upon the conviction of the person arrested, but no reward shall be paid except after such conviction.

SEC. 1782. When a person apprehends and delivers to the proper sheriff or officer the person for whose apprehension a reward is offered, he must take his certificate of such delivery, and the Governor, on the production of such certificate, must certify the amount of the claim to the auditor.

SEC. 1783. A person charged in any State of the United States with treason, felony, or other crime, who flees from justice and is found in this State, must, on demand of the executive authority of the State, from which he fled, be delivered up by the Governor of this State, to be removed to the State having jurisdiction of the crime,

SEC. 1784. A magistrate may issue a warrant for the apprehension of the person so charged, who flees from justice and is found in this State.

SEC. 1785. The proceedings for the arrest and commitment of a person so charged are, in all respects, similar to those provided in this Code for the arrest and commitment of a person charged with a public offense committed in this State, except that an exemplified copy of the indictment found, or other judicial proceedings had against him, in the State in which he is charged to have committed the offense, may be received as evidence before the magistrate.

SEC. 1786. If, from the examination, it appears that the accused has committed the crime alleged, the magistrate, by warrant reciting the accusation, must commit him to the proper custody in his county, for such time, to be specified in the warrant, as the magistrate may deem reasonable, to enable the arrest of the fugitive under the warrant of the executive of this State, on the requisition of the executive authority of the State in which he committed the offense, unless he gives bail as provided in the next section, or until he is legally discharged.

SEC. 1787. The magistrate may admit the person arrested to bail by an undertaking with sufficient sureties, and in such sum as he deems proper, for his appearance before him at a time specified in the undertaking, and for his surrender to arrest upon the warrant of the Governor of this State.

SEC. 1788. Immediately upon the arrest of the person so charged, the magistrate must give notice thereof to the county attorney of the county.

SEC. 1789. The county attorney must immediately thereafter give notice to the executive authority of the State, or to the prosecuting attorney or presiding judge of the court of the city or county within the State having jurisdiction of the offense, to the end that a demand may be made for the arrest and surrender of the person so charged.

SEC. 1790. The person arrested must be discharged from custody or bail, unless, before the expiration of the time designated in the warrant or undertaking, he is arrested under the warrant of the Governor of this State.

SEC. 1791. The magistrate must return his proceedings to the District Court of the county, which must thereupon inquire into the cause of the arrest and detention of the person charged, and if he is in custody, or the time of his arrest has not elapsed, it may discharge him from detention, or may order his undertaking or bail to be canceled, or may continue his detention for a longer time, or readmit him to bail, to appear and surrender himself within a time specified in the undertaking.

SEC. 1792. When the Governor of this State, in the exercise of the authority conferred by Section 2, Article IV, of the Constitution of the United States, or by the laws of this State, demands from the executive authority of any state of the United States, or of any foreign government, the surrender to the authorities of this State of a fugitive from justice, who has been found and arrested in such State or foreign government, the accounts of the person employed by him to bring back such fugitive must be audited by the Board of Examiners, and paid out of the State treasury.

SEC. 1793. No compensation, fee, or reward of any kind can be paid to or received by a public officer of this State, or other person, for a service rendered in procuring from the Governor the demand mentioned in the last section, or the surrender of the fugitive, or for conveying him to this State, or detaining him therein, except as provided for in such section.

CHAPTER V.

MISCELLANEOUS PROVISIONS RESPECTING SPECIAL PROCEEDINGS OF A CRIMINAL NATURE.

Section 1795. Parties to special proceedings, how designated.
" *1796. Entitling affidavits.*
" *1797. Subpoenas.*

SEC. 1795. The party prosecuting a special proceeding of a criminal nature is designated in this Code as the complainant, and the adverse party as the defendant.

SEC. 1796. The provisions of Section 1608, in respect to entitling affidavits, are applicable to such proceedings.

SEC. 1797. The courts or magistrates before whom such proceedings are prosecuted, may issue subpoenas for witnesses, and punish their disobedience in the same manner as in a criminal action.

TITLE XIII.

PROCEEDINGS FOR BRINGING PERSONS IMPRISONED IN THE STATE PRISON OR THE JAIL OF ANOTHER COUNTY, BEFORE A COURT.

Section 1800. Persons imprisoned in another county, how brought before a court.

SEC. 1800. When it is necessary to have a person imprisoned in the State prison brought before any court, or a person imprisoned in a county jail brought before a court sitting in another county, an order for that purpose may be made by the court, and executed by the sheriff of the county where it is made.

TITLE XIV.

DISPOSITION OF FINES AND FORFEITURES.

Section 1805. Fines and forfeitures, how disposed of.

SEC. 1855. All fines and forfeitures collected in any court, except police courts, must be applied to the payment of the costs of the case in which the fine is imposed or the forfeiture incurred; and after such costs are paid, the residue must be paid to the county treasurer of the county in which the court is held.

PART III.

State Prisons, County Jails and Reform School.

TITLE I.

THE STATE PRISON.

Section 1810. Board of State prison commissioners.
" *1811. Board has control of grounds, etc.*
" *1812. Officers of board.*
" *1813. Duty of secretary.*
" *1814. Appointment of warden.*
" *1815. Duties of warden.*
" *1816. Same.*
" *1817. Residence of warden, monthly estimate.*
" *1818. Accounts to be certified by warden.*
" *1819. Sealed proposals for supplies.*
" *1820. Labor of convicts.*
" *1821. Employment of convicts.*
" *1822. Escape of convicts.*
" *1823. Prison extended over places of labor.*
" *1824. Moneys received for prison labor.*
" *1825. Inspection of books and papers.*
" *1826. United States convicts, expense of.*
" *1827. Rules and regulations of prison.*
" *1828. Penalty for violation of rules.*
" *1829. Commutation of sentence upon good behavior.*
" *1830. Forfeiture of commutation.*
" *1831. Discharged convict entitled to suit of clothes and money.*
" *1832. County jails may be made prisons.*
" *1833. Bond of warden.*
" *1834. Insane convicts.*
" *1835. Reports of warden and Board.*
" *1836. State prison fund.*
" *1837. Compensation of sheriffs.*

SEC. 1810. The Board of State Prison Commissioners consists of the Governor, the Secretary of State, and Attorney

General, and has such supervision of all matters connected with the State prison as is provided for in this Title.

SEC. 1811. The Board of State Prison Commissioners has full control of the State prison grounds, buildings, prison labor and prison property; has power to purchase or cause to be purchased, all needed commissary supplies, all raw material and tools necessary for any manufacturing purposes carried on at said prison; and to sell all manufactured articles, and collect the money for the same. The Board has power to make all needful rules and regulations in regard to the management of the prison, the discipline of the convicts and the conduct and compensation of the guards and assistants.

SEC. 1812. The Governor is the President, and the Secretary of State the secretary of the Board; and any two thereof are a quorum, with full power to transact any business that may be required of such Board.

SEC. 1813. It is the duty of the secretary to keep, or cause to be kept, a full and complete account, in a book or books to be kept for that purpose, of all the transactions and proceedings of the Board.

SEC. 1814. The Board must appoint a warden, who shall hold his office under its authority, and is liable to be removed at any time at its discretion.

SEC. 1815. The warden has the power to appoint and remove all necessary guards and assistants in and about the prison, subject to the approval of the board as to the number appointed.

SEC. 1816. The warden has the general superintendance of prison discipline and prison labor; must keep, or cause to be kept, a book wherein shall be recorded the name, age, sex, occupation, place of birth, where sent from, the crime charged, date of incarceration and the expiration of the term for which the prisoners therein confined were sentenced, and shall make out a correct monthly report of the same, and file such report with the secretary of the Board; and shall securely and carefully file in his office all commitments of prisoners that may be sent to the State prison, and keep, or cause to be kept, a correct account, and certify any mileage that may be due to any sheriff or deputy sheriff for conveying prisoners to the State prison.

SEC. 1817. The warden must reside at the State prison, and within five days before the expiration of each month must make out a complete statement of the probable or estimated amount of clothing, provisions, medicines, and all other stores and necessaries, and the character and quality of the same, and make a requisition upon the Board; and it must, as soon thereafter as possible, furnish or cause to be furnished, the articles, stores, or provisions thus required, or so much thereof as it may deem necessary for the use of the prison during the ensuing month; but no supplies must be purchased or articles furnished the prison at a greater price than the usual market rates for such articles; and the Board is not prevented from furnishing any necessary article at any time not enumerated in the monthly requisition of the warden, or from purchasing or contracting for a greater than a monthly supply of any article used in said prison, when deemed for the best interest of the State.

SEC. 1818. All accounts for provisions, clothing, medicines, fuel, lights, or other supplies or stores furnished to the State prison, as prescribed in the preceding section, must be presented to the warden, and if the articles therein enumerated have been received, he must so certify, and the accounts so certified must be delivered to the secretary of the Board, and if the account be correct, and the articles named therein were purchased or ordered by the Board, it must audit and allow the claim. All claims for salaries, repairs, buildings, or labor, must be certified to by the warden, presented, allowed, and paid as other indebtedness against the State prison.

SEC. 1819. The Board may, whenever in its judgment it would be for the best interest of the State, advertise for sealed proposals for the furnishing of supplies to the State prison. Notice of the time and place of the letting of each contract must be given for at least two consecutive weeks in some newspaper published within this State. Such notice must state the character, quality, and quantity of the supplies required, and any person may bid for the furnishing of all or any part of the articles enumerated in the notice; but no contract must be made for furnishing more than one year's supplies, as estimated by the warden.

SEC. 1820. The Board may, in its discretion, cause the prisoners, or any number of them, to be employed in any mechanical pursuits, and at hard labor, and furnish any convicts thus employed with any material that may be deemed necessary, in the same manner as is provided for the furnishing of supplies and stores to the State prison, and they shall, in all respects, have the exclusive control of the employment of the convicts, and may from time to time employ them in such manner as, in its opinion, will best subserve the interest of the State and the welfare of the prisoners. But neither the Board nor the warden must let by contract to any person the labor of any convict in the prison.

SEC. 1821. If, at any time, the Board is of the opinion that it would be to the interest of the State to employ any portion of the prisoners, either within or without the walls or enclosures of the State prison, either in improvement of the public grounds or buildings where they may be profitably employed, it has power to so employ such labor; it must, in such case, direct the warden accordingly in writing, and cause a record of such order to be entered at length on the records of the Board.

SEC. 1822. The warden and officers of the prison shall incur no forfeiture for the escape of any convict employed without the walls or inclosures of the prison by order of the Board, or going to or returning from such employment, unless such escape should arise from neglect or violation of law, or the rules, regulations, or by-laws of the Board.

SEC. 1823. The State prison is hereby declared to extend to and over any place or places of employment of the convicts without the walls or inclosures of the prison, at which convicts may be employed.

SEC. 1824. All sums that are now or may hereafter become due to the State for any manufactured article sold, or for labor performed, either within or without the prison walls or inclosures, must be certified to by the warden under oath to the Board, who must receive and receipt for the same; and all moneys thus received must be paid into the State treasury, and the treasurer must place the same to the credit of the State prison fund; and the secretary of said Board must make a report thereof to the auditor, on or before the tenth day of each month.

SEC. 1825. All books or papers kept by or under the direction of the secretary of the Board and the warden of the State prison, must on all times, on legal days, be open to the inspection of the members of the Board, all State officers, members of the Legislative Assembly, and the sheriffs of the several counties of this State; and shall, at the expiration of their term of office, be delivered over to their successors.

SEC. 1826. The Board and the warden of the State prison are hereby required to receive all criminals sentenced to the State prison by the authorities of the United States, and to keep them at hard labor or in solitary confinement, agreeably to the order of the court pronouncing such sentence, until legally discharged therefrom; and the warden must certify to the Board the expense of keeping all convicts thus sentenced, and the said Board must certify the same to the State auditor.

SEC. 1827. The Board must, from time to time, cause to be placed in some conspicuous place or places about the prison, so much of the laws of the State, and the rules, regulations, and by-laws, of the State prison, as relates to the intercourse between visitors to the prison and the prisoners therein confined.

SEC. 1828. Any person who violates any of the rules, regulations, or by-laws of the prison, as adopted and published by the Board, must be subject to such penalties as may be prescribed by the Board, and proceeded against in such manner as may be prescribed by law and the rules of the Board. No barbarous punishments, by whipping, showering, or otherwise, must be prescribed by the Board; nor shall convicts, as punishment, be deprived of the regular rations of food, and at the same time compelled to work the usual number of hours per day.

SEC. 1829. The Board is hereby authorized and required to grant to any convict confined in the State prison, who shall well behave himself, and who shall perform regular labor during good health, either within or without the State prison inclosures, a credit of the time from his sentence as appears in the following table, for respective years of his sentence, and pro rata for any part of a year when the sentence is for more or less than a year:

NUMBER OF YEARS OF SENTENCE.	GOOD TIME GRANTED.	TOTAL GOOD TIME MADE.	TIME TO BE SERVED IF FULL TIME IS MADE.
1st year	1 month	1 month	11 months
2d year	2 months	3 months	1 year and 9 months
3d year	3 months	6 months	2 years and 6 months
4th year	4 months	10 months	3 years and 2 months
5th year	5 months	1 year and 3 months	3 years and 9 months
6th year	6 months	1 year and 9 months	4 years and 3 months
7th year	6 months	2 years and 3 months	4 years and 9 months
8th year	6 months	2 years and 9 months	5 years and 3 months
9th year	6 months	3 years and 3 months	5 years and 9 months
10th year	6 months	3 years and 9 months	6 years and 3 months
11th year	6 months	4 years and 3 months	6 years and 9 months
12th year	6 months	4 years and 9 months	7 years and 3 months
13th year	6 months	5 years and 3 months	7 years and 9 months
14th year	6 months	5 years and 9 months	8 years and 3 months
15th year	6 months	6 years and 3 months	8 years and 9 months
16th year	6 months	6 years and 9 months	9 years and 3 months
17th year	6 months	7 years and 3 months	9 years and 9 months
18th year	6 months	7 years and 9 months	10 years and 3 months
19th year	6 months	8 years and 3 months	10 years and 9 months
20th year	6 months	8 years and 9 months	11 years and 3 months
21st year	6 months	9 years and 3 months	11 years and 9 months
22d year	6 months	9 years and 9 months	12 years and 3 months
23d year	6 months	10 years and 3 months	12 years and 9 months
24th year	6 months	10 years and 9 months	13 years and 3 months
25th year	6 months	11 years and 3 months	13 years and 9 months

SEC. 1830. Any such convict who commits an assault upon his keeper, any guard, officer, or convict, or otherwise endangers life, or by any flagrant disregard of the rules of the prison, or any misdemeanor whatever, forfeits all deductions of time earned by him for good conduct before the commission of such offense; such forfeiture, however, must only be made by the Board, after due proof of the offense, and notice to the offender; nor shall such forfeiture be imposed when a party has violated any rule or rules without violence or evil intent, of which the Board must be the sole judges. The name of no convict who attempts to escape must be sent to the Board for the commutation herein provided.

SEC. 1831. Whenever any convict is discharged from imprisonment, the warden must provide him with proper and sufficient clothing, at a cost not exceeding twenty-five dollars, and must pay him in addition five dollars in money.

SEC. 1832. Whenever the State prison is insufficient to contain the prisoners sentenced to confinement therein, the Board must enter into contracts with the commissioners of such counties as have jails suitable for keeping convicts, that may thereafter be sentenced to confinement in the State prison, and must notify the district judges that such jails have been procured for State prison purposes, and such judges, until further notified, must sentence any prisoner convicted of a felony to one of the jails so designated.

SEC. 1833. The warden, before entering upon the discharge of his duties, shall execute a bond in such sum as the Board designates, not exceeding twenty thousand dollars, for the faithful discharge of his duties, which bond shall be given to the State, approved by the State Treasurer, and filed with the Secretary of State.

SEC. 1834. When the warden is of opinion that any prisoner is insane, he must certify the fact under oath to the Board which may, in its discretion, order the removal of such prisoner to the insane asylum. As soon as the authorities of the asylum ascertain that such person is not insane, they must immediately notify the Board of that fact, and thereupon the warden must cause such prisoner to be at once returned to the prison, if his term of imprisonment has not expired.

SEC. 1835. The warden must, on or before the first Monday of November of each year, make a detailed report to the Board for the year ending on the last day of the preceding month, stating therein the names of the guards and assistants, and other officers, with their salaries, the number of convicts, showing the name of each convict, his age and general appearance, when and where convicted, and of what crime, term of sentence and when it expires, and the number received and discharged during the year, the amount of manufacture, and the money received from the same and the cost thereof, and a full statement of the condition, management, and concerns of the prison, and the Board must make a like report to each Legislative Assembly.

SEC. 1836. The moneys appropriated by the Legislative Assembly and the proceeds of the labor of prisoners constitute the State prison fund. The moneys in the State prison fund are applicable to the payment of the expenses of the prison, and salaries. The expenses and salaries must be audited and allowed by the Board of Examiners; after which, upon the order of the Board, the State Auditor must draw his warrant on the Treasurer therefor, and the Treasurer must pay the same out of such fund. The Board cannot contract any debts or incur any liability binding upon the State.

SEC. 1837. Sheriffs delivering prisoners at the State prison must receive all actual expenses necessarily incurred in their transportation, the amount of the expenses in each case to be audited and allowed by the Board of Examiners, and paid out of any moneys in the State treasury appropriated for that purpose, and no further or other compensation must be received by sheriffs for such transportation or services.

TITLE II.

COUNTY JAILS.

Section *1840.* *A jail must be built in each county.*
" *1841.* *Other jails authorized.*
" *1842.* *County jails, by whom kept and for what used.*
" *1843.* *Rooms required in county jails.*
" *1844.* *Prisoners to be classified.*
" *1845.* *Prisoners must be actually confined.*
" *1846.* *Sheriff to receive prisoners committed by courts.*
" *1847.* *Sheriff answerable for safe keeping of such prisoners.*
" *1848.* *When jail of a contiguous county may be used.*
" *1849.* *Keeper of jail in contiguous county to receive prisoners.*
" *1850.* *When jail in contiguous county to cease to be used.*
" *1851.* *Prisoners to be returned to proper county.*
" *1852.* *Prisoners may be removed in case of fire.*
" *1853.* *Prisoners may be removed in case of pestilence.*
" *1854.* *Papers served on jailer for prisoner.*
" *1855.* *Guard for jail.*
" *1856.* *Sheriff to receive all persons duly committed.*
" *1857.* *Prisoners on civil process, when not to be received.*
" *1858.* *Prisoners may be required to labor.*
" *1859.* *Rules and regulations for the performance of labor.*
" *1860.* *Authority of commissioners.*
" *1861.* *Duty of sheriff.*

SEC. 1840. There must be built or provided and kept in good repair in each county one common jail, at the expense of the county, at the county seat.

SEC. 1841. Whenever, in the discretion of the commissioners of the several counties, it is necessary or desirable to build a jail or lockup in any town other than the county seat, they are hereby authorized so to do, but no such jail or lockup must cost to exceed one thousand dollars.

SEC. 1842. The common jails in the several counties of this State are kept by the sheriffs of the counties in which they are respectively situated, and are used as follows:

1. For the detention of persons committed in order to secure their attendance as witnesses in criminal cases.

2. For the detention of persons charged with crime and committed for trial.

3. For the confinement of persons committed for contempt, or upon civil process, or by other authority of law.

4. For the confinement of persons sentenced to imprisonment therein upon a conviction of crime.

SEC. 1843. Each county jail must contain a sufficient number of rooms to allow all persons belonging to either one of the following classes to be confined separately and distinctly from persons belonging to either of the other classes:

1. Persons committed on criminal process and detained for trial.

2. Persons already convicted of crime and held under sentence.

3. Persons detained as witnesses, or held under civil process, or under an order imposing punishment for a contempt.

4. Males separately from females.

SEC. 1844. Persons committed on criminal process and detained for trial, persons convicted and under sentence, and persons committed upon civil process, must not be kept or put in to the same room, nor shall male and female prisoners (except husband and wife) be kept or put in to the same room.

SEC. 1845. A prisoner committed to the county jail for trial, or for examination, or upon conviction for a public offense, must be actually confined in the jail until he is legally discharged; and if he is permitted to go at large out of the jail, except by virtue of a legal order or process, it is an escape.

SEC. 1846. The sheriff must receive, and keep in the county jail, any prisoner committed thereto by process or order issued under the authority of the United States, until he is discharged according to law, as if he had been committed under process issued under the authority of this State; provision being made by the United States for the support of such prisoner.

SEC. 1847. A sheriff to whose custody a prisoner is committed, as provided in the last section, is answerable for his safe keeping, in the courts of the United States, according to the laws thereof.

SEC. 1848. When there is no jail in the county, or when the jail becomes unfit or unsafe for the confinement of prisoners, the district judge may, by a written appointment, filed with the clerk, designate the jail of a contiguous county for the confinement of the prisoners of his county, or any of them, and may at any time modify or annul the appointment.

SEC. 1849. A copy of the appointment, certified by the clerk, must be served on the sheriff or keeper of the jail designated, who must receive into his jail all prisoners authorized to be confined therein, pursuant to the last section, and who is responsible for the safe keeping of the persons so committed, in the same manner and to the same extent as if he was sheriff of the county for whose use his jail is designated, and with respect to the persons so committed he is deemed the sheriff of the county from which they were removed.

SEC. 1850. When a jail is erected in the county for the use of which the designation was made, or its jail is rendered fit and safe for the confinement of prisoners, the District Judge of that county must, by a written revocation, filed with the clerk, declare that the necessity for the designation has ceased, and that it is revoked.

SEC. 1851. The clerk must immediately serve a copy of the revocation upon the sheriff of the county, who must thereupon remove the prisoners to the jail from which the removal was had.

SEC. 1852. When a county jail or building contiguous to it is on fire, and there is reason to believe that the prisoners may be injured or endangered, the sheriff or jailer must remove them to a safe and convenient place, and there confine them as long as it may be necessary to avoid the danger.

SEC. 1853. When a pestilence or contagious disease breaks out in or near a jail, and the physician thereof certifies that it is likely to endanger the health of the prisoners, the district judge may, by a written appointment, designate a safe and convenient place in the county, or the jail in a contiguous county, as the place of their confinement. The appointment must be filed in the office of the clerk, and authorize the sheriff to remove the prisoners to the place or jail designated, and there confine them until they can be safely returned to the jail from which they were taken.

SEC. 1854. A sheriff or jailer upon whom a paper in a judicial proceeding, directed to a prisoner in his custody, is served, must forthwith deliver it to the prisoner, with a note thereon of the time of its service. For a neglect to do so he is liable to the prisoner for all damages occasioned thereby.

SEC. 1855. The sheriff, when necessary, may, with the assent in writing of the district judge, employ a temporary guard for the protection of the county jail, or for the safe keeping of prisoners, the expenses of which are a county charge.

SEC. 1856. The sheriff must receive all persons committed to jail by competent authority, and provide them with necessary food, clothing and bedding, for which he shall be allowed a reasonable compensation, to be determined by the Board of County Commissioners, and, except as provided in the next section, to be paid out of the county treasury.

SEC. 1857. Whenever a person is committed upon process in a civil action or proceeding, except when the State is a party thereto, the sheriff is not bound to receive such person, unless security is given on the part of the party at whose instance the process is issued, by a deposit of money, to meet the expenses for him of necessary food, clothing, and bedding, or to detain such person any longer than these expenses are provided for. This section does not apply to cases where a party is committed as a punishment for disobedience to the mandates, process, writs, or orders of court.

SEC. 1858. Persons confined in the county jail under a judgment of imprisonment rendered in a criminal action or proceeding, may be required by the Board of County Commissioners to perform labor on the public works or ways in the county.

SEC. 1859. The Board of County Commissioners making such order may prescribe and enforce the rules and regulations under which such labor is to be performed.

SEC. 1860. The County Commissioners have the care of building, inspecting and repairing the jail, and must, once every three months, inquire into its state, as respects the security thereof, and the treatment and condition of prisoners, and must take all necessary precaution against escape, sickness or infection.

SEC. 1861. The sheriff of each county must, on the first Monday in January, and every three months thereafter, return to the County Commissioners a certified list of the names of all prisoners in his custody on the last day of the preceding month, with the time and cause of their confinement, the length of time for which they were committed, and the number received and discharged during the preceding three months, and in case he fails so to do, the said sheriff must not receive any compensation for the sustenance of the prisoners in his custody.

TITLE III.

THE STATE REFORM SCHOOL.

Section 1875. Reform School established.
" 1876. Its control and supervision.

SEC. 1875. The State reform school is hereby established at ———, and has for its object the keeping and reformatory training of youths between the ages of eight and eighteen, residents of the State, and who, under the rules and regulations established by a competent authority, must be received into the school.

SEC. 1876. The control and supervision of the State reform school is vested in the Board of State Prison Commissioners, which must establish the rules and regulations for the government of the school, and such other rules and regulations as may be necssary, not inconsistent with the laws of the State.

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